No. 05-1631

Supreme Court, U.S.
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In the Supreme Court of the United States

TIMOTHY SCOTT, A COWETA COUNTY,
GEORGIA DEPUTY SHERIFF,
Petitioner,

v

VICTOR HARRIS,
Respondent.

ON A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF AMICUS CURIAE, GEORGIA ASSOCIATION OF CHIEFS OF POLICE, INC. IN SUPPORT OF NEITHER PARTY

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The Georgia Association of Chiefs of Police, Inc. (hereinafter referred to as the "GACP"), with the written consent of Counsel for Appellant and of Counsel for Appellee, hereby respectfully submits its *Amicus Curiae* Brief in support of neither party. [1]

IDENTITY AND INTEREST OF AMICUS CURIAE

The Georgia Association of Chiefs of Police, Inc. (*"GACP"*) is a Georgia non-profit corporation. It is both the largest professional association for law enforcement agency heads in the State of Georgia, and one of the largest such organizations in the United States. Its principle Active Members include more than 778 Chief Executive Officers of municipal, county, state, and federal law enforcement agencies, railroad law enforcement agencies, public school police, and private and public college and university police departments in Georgia.

The GACP's Constitution and Bylaws describes its Mission as:

> . . . dedicated to providing police services in the State of Georgia that are aimed at achieving more effective and efficient crime control, reduced fear of crime, improved quality of life, and improved police legitimacy through a proactive reliance on community resources that seeks to minimize crime causing conditions.

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[1] Pursuant to Supreme Court Rule 37.6, Amicus Curiae certifies that no counsel for a party authored any part of this Brief, nor did any person or entity other than *Amicus Curiae*, its members, or its counsel make any monetary contribution to the preparation or submission of this Brief.

> The Georgia Association of Chiefs of Police strives to ensure that all our citizens are served in a professional, ethical and equitable manner that respects individuals, protects our democratic ideals and system of government, pursues greater accountability of police, greater public share in decision making, and greater concern for civil rights and liberties.

One of the GACP's most important functions is to provide and approve all training and education required for Police Chiefs and non-elected chief executives of state, county and municipal law enforcement agencies and campus police agencies throughout Georgia under O.C.G.A. §35-8-20 and under the Peace Officer Standards and Training Council ("POST") Regulations. Thus, the GACP possesses a uniquely broad and comprehensive perspective on the key issues before the Court in the present matter.

STATEMENT OF THE CASE

Since it is not seeking to advance the cause of either Party to this case Amicus adopts the Statements of the Case presented by both Parties.

SUMMARY OF ARGUMENT

High-speed police vehicular pursuits, while dangerous, are sometimes necessary for the protection of the public. In carefully-defined circumstances, the execution of a Precision Immobilization Technique or "PIT maneuver" by an officer who has been specifically trained to competently execute the tactic need not create undue risk to the safety of the

participants or the public.[2] If it is employed in accord with policies carefully developed to ensure due regard for the rights and safety of the participants and of the public, the use of a PIT maneuver will not violate a suspect's or the public's constitutional rights. Thus the PIT maneuver should remain available in the arsenal of legitimate law enforcement tools.

ARGUMENT

Police pursuits are sometimes necessary to apprehend dangerous felons or traffic violators who are creating an imminent and substantial danger to the public. Tragically they also can result in death or serious injury to the fleeing suspect, innocent bystanders, or even the officer himself. The Georgia Supreme Court succinctly articulated this perplexity in *City of Winder v. McDougald,* 276 Ga. 866, 867 (2003) (quoting *Archer v. Johnson,* 90 Ga. App. 418, 424 (1954)) when it stated:

> "While it is desirable . . . that the officer overtake[s] and apprehend[s] the criminal, . . . it is equally as important that innocent persons, whether or not connected with the emergency to be met, not be maimed or killed in the operation."

Id. at 867.

In response to the dilemma confronting law enforcement agencies, the Executive Board of the Georgia Association of Chiefs of Police commissioned an *Ad Hoc* Committee to review police pursuits and to provide guidance to Georgia's

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[2] Insofar as Amicus is supporting neither party in this case, it does not take a position on the factual issue of whether Appellant Scott's action in this case constituted a PIT maneuver.

law enforcement executives for the development of sound legal and common-sense pursuit policies. Gathering information from several different perspectives, the Committee was comprised of law enforcement professionals, trainers, academic advisers and attorneys. In forming its conclusions and advice the Committee's members considered current law, policy concerns, technology issues, and the research data compiled and reported by the Georgia Institute of Technology Research Project on the Precision Immobilization Technique (PIT).

On July 22, 2006 the Executive Board of the GACP adopted the report and recommendations of the *Ad Hoc* Committee, entitled *LAW ENFORCEMENT PURSUITS IN GEORGIA: REVIEW AND RECOMMENDATIONS* (hereinafter referred to as "Report and Recommendations") [3]

The Report and Recommendations focus specifically upon the following subjects: (1) statistical data regarding police pursuits; (2) Georgia law governing police pursuits; (3) policy considerations in preparing a pursuit policy; (4) the PIT Maneuver; and (5) technological alternatives to pursuits. It concluded with recommendations to the Georgia law enforcement community regarding police pursuits.

To assist the Court in the instant case, *Amicus Curiae* GACP submits its Report and Recommendations which are contained in Appendix A.

Of particular significance is the Report's conclusion, based on the Georgia Institute of Technology ("Georgia Tech") research results, that:

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[3] Minor revisions were made to the Report and Recommendations of the Ad Hoc Committee, and the Report was issued to the public on August 8, 2006.

> . . . the Georgia Tech research confirms law enforcement's experience with the PIT maneuver. Properly performed by a trained driver under certain conditions, it is controlled, predictable method to stop a pursuit. The PIT maneuver can be simulated utilizing a computer model. The computer simulation results as to the force needed to perform the maneuver displayed the same linear, predictable trend as did the experiments with actual vehicles. Additionally, the research demonstrates that the PIT maneuver is not the same as ramming. It uses far less force than a ram. Moreover, the ramming of a suspect vehicle is not controlled and hence, not predictable.

(/Id./ at A-78, /footnote omitted/)

CONCLUSION

The PIT Maneuver can be a useful tool in the repertoire of techniques employed by law enforcement officers to apprehend violent felons and dangerous criminals. If executed by a properly-trained officer in accord with the recommendations contained in the Report and Recommendations, the PIT maneuver need not unduly infringe upon the Constitutional rights of the participants or the public.

Respectfully, *Amicus Curiae* submits that it is vital to public safety that this means of protecting the public remain available to law enforcement agencies.

Respectfully submitted,

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Law Enforcement Pursuits in Georgia: Review and Recommendations

Submitted by the Ad Hoc Committee
on Law Enforcement Pursuits

Adopted by the Georgia Association of Chiefs of Police Executive Board

July 22, 2006
(Revised August 8, 2006)

Ad Hoc Committee on Law Enforcement Pursuits

Ad Hoc Committee Chairman

Chief Louis Dekmar, LaGrange Police Department

Ad Hoc Committee Members

Chief Deputy Mike Boyd, Gwinnett County Sheriff's Office
Chief Woody Blue, Milledgeville Police Department
Chief Rick Boren, Columbus Police Department
Chief Mike Burns, Macon Police Department
Chief George Coleman, Fulton County Police Department
Deputy Director Dawn Diedrich, Esq., Georgia Bureau of Investigation
Dr. Robert Friedmann, Georgia State University
Chief John Harden, Sandersville Police Department
Chief Jack Lumpkin, Athens-Clarke County Police Department
Director Dale Mann, Georgia Public Safety Training Center
Director of Operations Tony M. McClung, Georgia Association of Chiefs of Police
Lt. Paul Michaud, Fulton County Police Department
Chief Jim Murray, Peachtree City Police Department
Chief Steve Parks, Chattanooga Police Department
Captain Russell D. Powell, Georgia State Patrol
Director Frank V. Rotondo, Georgia Association of Chiefs of Police
Chief Frank Simons, Valdosta Police Department

I. Introduction

Police pursuits are an area that is increasingly scrutinized by the public. Police pursuits can result in the apprehension of forcible felons or traffic violators who have created a danger to the public. Pursuits also can result in the death or injury to innocent bystanders and the police officers who are pursuing the suspect. Law enforcement agencies across the country are faced with the dilemma of when to engage in pursuits. The Georgia Supreme Court has succinctly articulated this dilemma in a recent case:

> "While 'it is desirable . . . that the officer overtake[s] and apprehend[s] the criminal, . . . it is equally as important that innocent persons, whether or not connected with the emergency to be met, not be maimed or killed in the operation.' "[1]

In response to this dilemma, on September 19, 2005 at a Georgia Association of Chiefs of Police Executive Board Meeting, President Chief Bryan Golden charged LaGrange Police Chief Louis M. Dekmar with chairing an Ad Hoc Committee (hereinafter "the Committee") to review police pursuits.[2] The Committee's purpose was to review the issue of police pursuits and provide guidance to Georgia's law enforcement executives for the development of sound, legal and common-sense pursuit policies. In an effort to gather information from several different perspectives, the Committee was comprised of law enforcement professionals,

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[1] *City of Winder v. McDougald*, 276 Ga. 866, 867 (2003) (quoting *Archer v. Johnson*, 90 Ga. App. 418, 424 (1954)).

[2] Georgia Association of Chiefs of Police, Executive Board Meeting Minutes 3 (September 19, 2005).

trainers, academic advisers, and attorneys.

To this end, the Committee or subgroups of the Committee met nine times to discuss current law, policy issues, technology issues, and the Georgia Institute of Technology research project on the Precision Immobilization Technique (PIT). This paper is the result of these meetings and the input of all members. It will focus specifically on (1) statistical data regarding police pursuits; (2) the law regarding pursuits in Georgia; (3) policy considerations in preparing a pursuit policy; (4) the PIT Maneuver; and (5) technological alternatives to pursuits. At the conclusion of the paper, the Committee will make recommendations to Georgia's law enforcement community regarding police pursuits.

II. Statistical Data Regarding Police Pursuits

As the purpose of this paper is to provide guidance to policymakers writing pursuit policies, the Committee wanted to obtain data regarding pursuits. There is no national or statewide database regarding pursuits. In order to learn about pursuits in Georgia, the Committee first polled Georgia Association of Chiefs of Police member agencies and requested their data regarding pursuits. The Committee also reviewed the nationwide literature regarding pursuits. This research is very limited.

The scant research that has been compiled in the area of police pursuits has been published primarily by Dr. Geoffrey Alpert, Professor of Criminal Justice at the University of South Carolina. In an interview conducted by Mr. Jim Phillips of PursuitWatch, Dr. Alpert says:

> Jim Phillips: You mentioned that there is no national pursuit data. Would you support legislation that required the mandatory

collection of that data on a national basis?

> Dr. Alpert: Several attempts have failed to have police agencies collect and report pursuit data voluntarily. Attempts at legislative reform have failed in congress. My sense is that if agencies are unwilling to voluntarily collect and report data, then they should be required to do so. There are a dozen states that have reporting systems and the IACP has a repository. I do not hold much hope, as there is no national reporting system for the use of firearms."[3]

As Dr. Alpert states, there is no nationwide database for police pursuits. There is no information on the number of pursuits per year, the number of accidents due to pursuits or the number of injuries due to pursuits.

There is information regarding fatalities associated with police pursuits available from data collected by the National Highway Traffic Safety Administration (NHTSA) that has been reported in the literature. In a 2002 article by John Hill, he discussed these statistics:

> The National Highway Traffic Safety Administration (NHTSA) reported that 314 people were killed during pursuits in 1998. Of this total, 2 were police officers and 198 were individuals being chased. The remaining 114 were either occupants of unrelated vehicles or pedestrians. The total was higher in each of

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[3]Phillips, James, *"PursuitWatch Interview with Dr. Geoffrey Alpert"* (2003) retrieved from http://pursuitwatch.org/index.shtml on June 16, 2006.

the 4 previous years.[4]

Looking at the 1998 statistics in terms of percentages, 63% of those killed were the suspect, 36% were bystanders and 1% was the pursuing officer.

Hill also stated that, "one organization estimates that about 2,500 persons die each year as a result of police pursuits and that another 55,000 are injured."[5] Even PursuitWatch, a Website founded by a father whose daughter was killed as a result of a police pursuit, does not claim that many deaths. According to "PursuitWatch Data," there are 14,000 injuries and 700 pursuit deaths each year.[6] These numbers are simply extrapolations and not based upon actual reports because there is no reporting system other than for fatalities.

The Committee requested current data from the NHTSA and has prepared a chart of this information.[7] The chart lists the fatality data from 1994 to 2004.

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[4]Hill, John, *High-speed Police Pursuits: Dangers, Dynamics, and Risk Reduction,* FBI LAW ENFORCEMENT BULLETIN, 15 (July 2002).

[5]Hill at 15 (citing newspaper article as support for statement but no reference as to name of organization).

[6]Phillips, James, *Police Pursuits – A National Epidemic* (Dec. 7, 2003) retrieved from http://pursuitwatch.org/stories/epidemic.htm on June 6, 2006.

[7]The NCSA's Information Services Branch prepared reports of Fatalities in Crashes Involving Law Enforcement in Pursuit for the years 1994 to 2004 on September 13, 2005. Each year's report is broken down by individual states. There is no indication from the report if there are states that are not providing data as stated by Hill. Hill at 15.

Fatalities in Crashes Involving
Law Enforcement in Pursuit1994 – 2004

Deaths Year	1994	1995	1996	1997	1998	1999
Suspects	284	249	267	193	201	212
Occupant of Other Vehicle	93	117	106	100	105	99
Non-Occupant	12	10	9	11	14	5
Officers	3	10	5	1	2	3
Total	392	386	390	305	322	319

Deaths Year	2000	2001	2002	2003	2004	Total
Suspects	190	223	248	229	214	2510
Occupant of Other Vehicle	103	121	121	106	108	1182
Non-Occupant	10	22	11	13	12	129
Officers	7	4	6	6	9	56
Total	310	370	386	354	343	3877

Based upon this data from 1994 to 2004, the average number of fatalities due to police pursuits across the United States is 352.5 per year. According to Hill, this NHTSA system is not a mandatory reporting system. "Typically only 90 percent of states report pursuit fatality data to NHTSA."[8] After reviewing the data provided by the NHTSA, the Committee was unable to determine whether certain states were not providing data. The Committee would, however, agree with Dr. Alpert's statement from 1997 that: "Nationally, very

[8]Hill at 15.

little is known about police pursuit driving."[9]

The Committee also requested pursuit data from Georgia Association of Chiefs of Police member agencies. The Committee received data from 15 Georgia law enforcement agencies that reported vehicle pursuits in 2005.[10]

These agencies reported a total of 419 vehicle pursuits in 2005. Of these pursuits, 110 pursuits (26%) resulted in an accident. While some agencies broke this information down further into accidents with injuries and those without, others did not. Using only the information from those agencies that provided further information regarding injuries, there were 28 accidents with injuries, one fatality, and 51 accidents involved no injuries.[11]

Of these pursuits, the reason for initiating the pursuit (if known) is listed below:

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[9]Kennedy, Dennis J. and Geoffrey P. Alpert, *A National Survey of Pursuits and the Use of Police Force: Data from Law Enforcement Agencies,* 25 J. CRIM. JUSTICE 315 (1997).

[10]The agencies that responded are as follows: Fulton County Police Department, LaGrange Police Department, Georgia Tech Police Department, Cobb County Police Department, Gwinnett County Police Department, DeKalb County Police Department, Covington Police Department, College Park Police Department, Forsyth County Sheriff's Office, Duluth Police Department, Dawson County Sheriff's Office, Savannah-Chatham Board of Education Police Department, Marietta Police Department, Baldwin County Sheriff's Office and Columbus Police Department. This data did not include information from the Georgia State Patrol.

[11]No agency provided any information regarding the use of the PIT maneuver.

Nature of Offense	Number
Traffic Offenses	228
Driving Under the Influence	5
Hit and Run	1
Aggravated Assaults	3
Wanted Person	1
Armed Robberies	2
Drug-related	1
Felony Offenses	50
Other incidents	68

There were 235 (56%) arrests resulting from the related pursuits. A number of intervention methods were utilized in some of these arrests. There also were 80 pursuits which were terminated by the officer or supervisor.

There is no standardized method of reporting police pursuits. Yet, the literature is in agreement as to the need for a nationwide database for police pursuits.[12] The results of this limited survey reveal the need for a standardized reporting method in order to collect accurate data on police pursuits. See Appendix A for charts regarding this analysis.

The lack of a police pursuit database compiled from Georgia pursuits leaves policymakers with a void. Without accurate data, law enforcement is left to the tried, but sometimes untrue, method of trial and error. The number of assumptions that policymakers make, even when supported by anecdotal

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[12]*See e.g.* National Institute of Justice, *Pursuit Management Task Force: Research Preview 3 United States Department of Justice* (Aug. 1998)("A national model for collection of pursuit statistics should be developed for the purpose of encouraging and facilitating research and to expand the body of knowledge relating to pursuits.").

stories from personal experiences, probably leaves law enforcement with a very imperfect picture of the whole issue of pursuit. Although some agencies do a great job in an after action review of each chase, many do not. Even those who review each pursuit use different reporting systems that make the data unusable in the aggregate.

In an effort to obtain accurate, timely information, the Committee has created a single, user friendly report that can be used to collect pursuit information from Georgia agencies. The draft of such a collection tool is attached to this report as Appendix B. This proposed data collection sheet is a simple, concise form that gives sufficient data to start a data collection bank. Nothing on the form would suggest the name of the officer, nor suspect, except in generic demographics. Similar to the Uniform Crime Reporting System, it would provide concrete information to law enforcement, as well as the citizens of the State of Georgia. In terms of implementation, the Committee will leave it to the Georgia General Assembly and the Georgia Association of Chiefs of Police to determine the best method to implement such a collection tool.

III. Legal Cases in Georgia

In order to write a pursuit policy, it is first necessary to understand the legal requirements for a lawful pursuit. The law does not require that officers pursue violators of the law because it is the officer's discretionary decision whether to arrest the violator. Georgia law, however, does recognize that law enforcement officers will need to pursue fleeing violators of the law and sets forth the officer's duty during such a pursuit. This section will review Georgia statutory and case law regarding the following: (1) the definition of an emergency vehicle, including the required equipment; (2) the circumstances that authorize the operation of an emergency

vehicle; (3) the specific statutory exceptions to the requirements of the Title 40 of the Georgia Code regarding motor vehicles; and (4) the duty to drive with due regard for the safety of all persons. Lastly, this section will address the types of lawsuits that may arise out of a pursuit case, as well as defenses that may be available in these lawsuits.

A. Emergency Vehicle Operation in Georgia

Georgia law makes specific provisions for the operation of a law enforcement vehicle during the "pursuit of an actual or suspected violator of the law."[13] O.C.G.A. § 40-1-1 defines an "authorized law enforcement vehicle" as a "motor vehicle belonging to a federal, state, or local law enforcement agency."[14] When an authorized law enforcement vehicle is in pursuit of a violator, the driver may:

> (1) Park or stand, irrespective of the provisions of this chapter;
> (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
> (3) Exceed the maximum speed limits so long as he or she does not endanger life or property; and
> (4) Disregard regulations governing direction of movement or turning in specified directions.[15]

In order to use these exceptions to Title 40 of the Georgia

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[13]O.C.G.A. § 40-6-6(a).

[14]O.C.G.A. § 40-1-1(5).

[15]O.C.G.A. § 40-6-6(b).

Code regarding motor vehicles, the driver of the law enforcement vehicle must utilize "an audible signal and a flashing or revolving blue light."[16]

Most significantly, however, these provisions do not "relieve the driver of an authorized emergency vehicle from the duty to drive with *due regard* for the safety of all persons."[17] Additionally, O.C.G.A. § 40-6-6(d)(2) addresses the situation where the "fleeing suspect . . . injures or kills any person during the pursuit" and provides that:

> the law enforcement officer's pursuit shall not be the proximate cause or a contributing proximate cause of the damage, injury or death caused by the fleeing suspect unless the law enforcement officer acted with *reckless disregard for proper law enforcement procedures in the officer's decision to initiate or continue the pursuit.*[18]

This provision provides the officer with a defense to a lawsuit by the innocent person who is injured by the fleeing suspect. This defense will be lost, however, if the officer has acted "with reckless disregard for proper law enforcement procedures." Most likely, the "proper law enforcement procedure" will be the agency's pursuit policy.[19] Hence the

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[16]O.C.G.A. § 40-6-6(c).

[17]O.C.G.A. § 40-6-6(d)(1) (emphasis added).

[18]O.C.G.A. § 40-6-6(d)(2) (emphasis added).

[19]*See City of Winder v. McDougald*, 254 Ga. App. 537 (2002) (holding that O.C.G.A. 40-6-6(d) did not apply to case because suspect did not fit within definition of person and denying summary judgment because expert witness testified that pursuit did not comply with agency

agency's pursuit policy will become relevant evidence in the lawsuit and the issue will be whether the pursuit was in compliance with the agency's pursuit policy. If the pursuit was not, then the officer loses the protection of O.C.G.A. § 40-6-6(d)(2) and may face liability if the suspect hits an innocent person.

In conclusion, it is the duty of the law enforcement officer to drive with "due regard" for the safety of all persons and also not to act with reckless disregard of the agency's pursuit policy.

B. Lawsuits Arising Out of Pursuits

In cases involving pursuits, there are two types of lawsuits that may arise. The first type is a state law tort action for negligence. The second type of lawsuit is brought pursuant to a federal law, 42 U.S.C. § 1983, and alleges a violation of the individual's constitutional rights, usually either the Fourth or the Fourteenth Amendment. This section will explain some typical lawsuits in these areas and also address the defenses available in each type.

1. Negligence Lawsuits

Most lawsuits arising out of a pursuit are negligence claims. Negligence is the "failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation."[20] For example, if a police officer

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policy), *rev'd by City of Winder v. McDougald,* 276 Ga. 866 (2003). The Georgia Supreme Court reversed the judgment of the Court of Appeals and concluded that O.C.G.A. 40-6-6(d) did apply so summary judgment should have been granted to the city.

[20]BLACK'S LAW DICTIONARY 1056 (7th ed. 1999).

accidentally hits another vehicle during a pursuit and injures the driver of vehicle, the driver may file a negligence claim against the officer. The other common scenario is when the fleeing violator accidentally hits another vehicle while he is being pursued by an officer. In these cases, the collision is not intentional.

A negligence claim arises when there is a duty, a breach of the duty, damages or injury and a causal connection between the breach and the injury. This causal connection is referred to as proximate cause. As discussed, the duty of the officer is to drive with due regard for the safety of the public and not to recklessly disregard proper law enforcement procedures. If the officer breaches that duty and someone is injured as a result of that breach, then there may be a successful claim. The following cases will illustrate these principles.

a. *Sammor v. Mayor & Alderman of Savannah*

In *Sammor v. Mayor & Alderman of Savannah*[21] decided in 1985, the Georgia Court of Appeals determined that the officer's actions did not constitute the proximate cause of the plaintiff's injuries.[22] The case arose out of a pursuit by a Savannah police officer. During the pursuit, the suspect vehicle struck the plaintiffs' vehicle from behind and caused injuries. The suspect died as a result of the accident.

The pursuit was initiated by the officer, who was operating a motorcycle unit, when he first observed the suspect vehicle traveling at 70 to 80 miles per hour through a city intersection. The officer activated his lights and siren and

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[21] 176 Ga. App. 176 (1985).

[22] *Sammor*, 176 Ga. App. at 177-78.

notified police headquarters to dispatch ambulances to two different intersections ahead because the officer "knew" an accident was going to occur due to the high speed of the suspect vehicle and the heavy traffic congestion.[23] The officer testified that "he had no intention or expectation of actually overtaking [the suspect] vehicle, the purpose of his pursuit being merely to attempt to keep the vehicle in sight, and to alert other drivers with his siren."[24] The suspect did in fact have an accident at one of the intersections.

The court ruled that the suspect vehicle was already traveling at the high rate of speed prior to contact with the officer and the accident occurred only two blocks from contact with the officer and therefore, the officer was not the proximate cause of the accident.[25] Accordingly, the trial court was correct in granting summary judgment for the officer.

b. *Mixon v. City of Warner Robbins*

In *Mixon v. City of Warner Robbins*[26] decided in 1994, the Georgia Supreme Court held that the evidence would authorize a jury to find that the officer had failed to "act in accordance with his duty under O.C.G.A. 40-6-6(d) to pursue[the suspect] with due regard for the safety of other drivers."[27] In that case, a Warner Robbins police officer observed a suspect vehicle run a stop sign in a residential

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[23]*Sammor*, 176 Ga. App. at 176.

[24]*Sammor*, 176 Ga. App. at 176.

[25]*Sammor*, 176 Ga. App. at 177-78.

[26]264 Ga. 385 (1994), *superseded by statute as stated in City of Winder v. McDougald*, 276 Ga. 866 (2003).

[27]*Mixon*, 264 Ga. at 391.

area. The officer initiated a pursuit and the suspect refused to stop. The officer pursued closely behind the suspect vehicle and the suspect ran a second stop sign and collided with another vehicle driven by the plaintiff, who was killed in the accident.

As the court explained, the evidence showed the following:

> [the officer] observed [the suspect] slow to three-to-five miles per hour before proceeding through a stop sign in a residential area. Thus, even though [the suspect] had committed a traffic violation and apprehension was warranted, the traffic violation had been minor and the risk of serious injury to other drivers had been slight. . . . When [the officer] began his pursuit, [the suspect] did not accede to the show of authority, but increased his speed. In his effort to evade apprehension, [the suspect] ultimately accelerated his vehicle to 55-60 miles per hour, almost twice the posted speed limit. Despite the fact that [the suspect's] original traffic violation had been minor and that his response to [the officer's] pursuit had been to increase his speed and thereby heighten the risk to other drivers, [the officer] nevertheless maintained his pursuit and was 'right up on [the suspect's] bumper' only seconds before [the suspect] crashed into Mrs. Mixon's vehicle.'[28]

Based upon this evidence, a jury could find that the officer had "failed to balance the risk to the safety of other drivers

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[28] *Mixon*, 264 Ga. at 390.

when he persisted in his efforts to arrest [the suspect] for a minor traffic offense even after [the suspect] escalated his flight into a high-speed chase in a residential area."[29] The Georgia Supreme Court ruled that there would be a jury trial in the case on the question of whether the officer acted with due regard for the safety of others.[30]

c. *Wilson v. City of Atlanta*

In *Wilson v. City of Atlanta*[31] decided in 1996, the Georgia Supreme Court concluded that the officer did not drive with reckless disregard for the safety of the public during the pursuit. An Atlanta Police Department officer heard a "fight/snatch thief" report over his radio, which gave the license plate number and description of the occupants in the vehicle.[32] The officer observed the suspect vehicle approximately twenty minutes later and followed the vehicle at normal speeds until it " 'dramatically increased' its speed as it approached an intersection."[33] The officer activated his blue lights and siren and radioed an emergency call, which activated other units and a helicopter. During the chase, the officer observed the suspect vehicle fail to stop for red lights and stop signs and drive the wrong way down a one-way street. While the traffic was medium to light, the officer pursued, but slowed as he passed through intersections. When traffic became medium to heavy, he discontinued the

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[29] *Mixon*, 264 Ga. at 391.

[30] *Mixon*, 264 Ga. at 391.

[31] 223 Ga. App. 144 (1996).

[32] *Wilson*, 223 Ga. App. at 146.

[33] *Wilson*, 223 Ga. App. at 147.

pursuit and resumed normal speed while maintaining visual contact.[34]

After discontinuing the pursuit, he observed the suspect vehicle swerve left of the double yellow centerline and crash head on into the plaintiff's vehicle. The officer testified that "at all times during [the] pursuit . . . he balanced the risk to the safety of other drivers and acted accordingly."[35] During the entire pursuit, he never "followed the suspects so closely that his "vehicle was right up on the suspects' vehicle's bumper.' "

The court found that the officer was responding to a call of violent criminal activity and had received a fairly positive identification of the vehicle and description of occupants before he observed the suspect vehicle.[36] The officer initiated a pursuit, but it did not escalate into a high-speed pursuit for several blocks. Only when the suspect vehicle's speed dramatically increased did the officer activate his emergency lights and sirens. Unlike the officer in *Mixon v. City of Warner Robbins,* the officer did not follow the suspect vehicle so closely as to be "on its bumper," but instead slowed at intersections and at all times monitored the traffic conditions.[37] The court ruled that the officer did not act with reckless disregard for the safety of others but instead "balanced the risks involved in his pursuit of the [suspect]

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[34] *Wilson*, 223 Ga. App. at 147.

[35] *Wilson*, 223 Ga. App. at 147.

[36] *Wilson*, 223 Ga. App. at 147.

[37] *Wilson*, 223 Ga. App. at 147.

vehicle.[38] For these reasons the court affirmed the trial court's grant of summary judgment for the officer.

d. Defenses to Negligence Actions

When an officer and his agency are sued in a negligence action, there are several defenses that may be asserted. This section will discuss three defenses: (1) O.C.G.A. § 40-6-6(d) which provides that the officer's actions in certain cases were not the proximate cause of the injury; (2) official immunity; (3) sovereign immunity.

(1) O.C.G.A. § 40-6-6(d)

After the Georgia Supreme Court decided *Mixon v. City of Warner Robbins*, the General Assembly modified O.C.G.A. § 40-6-6 and added subsection (d)(2).[39] It provides the following:

> When a law enforcement officer in a law enforcement vehicle is pursuing a fleeing suspect in another vehicle and the fleeing suspect damages any property or injures or kills any person during the pursuit, the law enforcement officer's pursuit shall not be the proximate cause or a contributing proximate cause of the damage, injury, or death caused by the fleeing suspect *unless the law enforcement officer acted with reckless disregard for proper law enforcement procedures in the officer's decision to initiate or continue the pursuit.* Where such reckless

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[38] *Wilson*, 223 Ga. App. at 148.

[39] *Wilson*, 223 Ga. App. 144, 148 n.2 (1996).

> disregard exists, the pursuit may be found to constitute a proximate cause of the damage, injury, or death caused by the fleeing suspect, but the existence of such reckless disregard shall not in and of itself establish causation.[40]

Subsection (d)(1), which requires the officer to "drive with due regard for the safety of all persons," still remains in O.C.G.A. § 40-6-6.[41] With the addition of subsection (d)(2), officers have a defense in cases where the fleeing suspect injures another person as long as the officer did not act with "reckless disregard for proper law enforcement procedures."[42]

In a 2003 decision in the case of *City of Winder v. McDougald,*[43] the Georgia Supreme Court considered the issue of whether this section applies when it is the fleeing suspect who is injured or killed. A fourteen year-old girl took her father's car without permission and was driving through the City of Winder at approximately 4:40 a.m. with no headlights illuminated.[44] An officer observed the vehicle traveling without lights and turned on his blue lights to make a traffic stop of the vehicle. The driver did not stop. The officer then turned on his siren and the driver "sped away."[45] As the pursuing officer followed, the driver increased her

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[40]O.C.G.A. § 40-6-6(d)(2) (emphasis added).

[41]O.C.G.A. § 40-6-6(d)(1).

[42]O.C.G.A. § 40-6-6(d)(2).

[43]276 Ga. 866.

[44]*McDougald*, 276 Ga. at 866.

[45]*McDougald*, 276 Ga. at 866.

speed, lost control of the car, and crashed into a utility pole. The driver was killed.

The Georgia Supreme Court considered whether O.C.G.A. §40-6-6(d)(2) should apply to this case. The court explained that this statute was amended by the legislature in 1995 in order to "limit liability when a fleeing suspect injures an innocent person" – those cases when an officer is pursuing a suspect and the suspect hits an innocent person who is simply driving down the road.[46] In such cases, the officer is not liable for the suspect's actions unless the officer acted with reckless disregard. Although the statute does not specifically address injuries or death to the fleeing suspect, the court concluded that the legislature intended it to apply in such cases.[47] As a result of this ruling, there was no trial in the case. The Supreme Court reminded law enforcement again that while it may be "desirable" that the officer apprehend a criminal, " 'it is equally as important that innocent persons, whether or not connected with the emergency to be met, not be maimed or killed in the operation.' "[48]

Additionally, it should be noted that the defense provided by O.C.G.A. § 40-6-6(d)(2), namely that the officer's actions in pursuing were not the proximate cause of the injury, will *not* apply when the officer is acting 'with reckless disregard for proper law enforcement procedures."[49]

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[46] *McDougald*, 276 Ga. at 867.

[47] *McDougald*, 276 Ga. at 868.

[48] *McDougald*, 276 Ga. at 867 (quoting *Archer v. Johnson*, 90 Ga. App. 418, 424 (1954)).

[49] O.C.G.A. § 40-6-6(d)(2).

(2) Official Immunity

Georgia law enforcement officers may also be given official immunity for engaging in the discretionary function of pursuing a fleeing violator so long as the officer does not act with "actual malice or with actual intent to cause injury."[50] The determination of whether the officer is entitled to the official immunity should be made before there is any determination of whether the officer was acting with "reckless disregard for proper law enforcement procedures" within the meaning of O.C.G.A. § 40-6-6(d)(2).[51] In *Cameron v. Lang,*[52] the Georgia Supreme Court explained the reasoning for official immunity as follows:

> The doctrine of official immunity, also known as qualified immunity, offers public officers and employees limited protection from suit in their personal capacity. Qualified immunity 'protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority, and done without wilfulness, malice, or corruption.' Under Georgia law, a public officer or employee may be personally liable only for ministerial acts negligently performed or acts performed with malice or an intent to injure. The rationale for this immunity is to preserve the public employee's independence of action without fear of

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[50] *Hanse v. Phillips,* 276 Ga. App. 558 (2005), *cert. granted,* 2006 Ga. LEXIS 214 (March 27, 2006).

[51] *Cameron v. Lang,* 274 Ga. 122, 124 (2001).

[52] 274 Ga. 122 (2001).

> lawsuits and to prevent a review of his or her judgment in hindsight. This protection is particularly important in the context of a high speed pursuit where police officers must make a split-second decision on whether to initiate the pursuit or continue it and the type of risks to take.[53]

Cameron v. Lang involved a vehicle pursuit by Deputy Cameron of a fleeing felon who crossed the centerline during the pursuit and struck the Lang's car, killing Mr. Lang.[54] The Georgia Supreme Court concluded that the officer's decision to engage in a high speed pursuit of a suspected felon was a discretionary decision.[55] Additionally the court found that there was no evidence that the deputy "acted with malice or an intent to injure in initiating or continuing the high speed chase."[56]

Of course, it is important to remember that official immunity applies only to the claim against the individual officer and does not apply to the claim against the municipality that employs the officer.

(3) Sovereign Immunity

The suit against the officer in his official capacity is in

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[53]*Cameron*, 274 Ga. at 123.

[54]*Cameron*, 274 Ga. at 122-23.

[55]*Cameron*, 274 Ga. at 125.

[56]*Cameron*, 274 Ga. at 125.

reality a suit against the agency that employs the officer.[57] The governmental entity, whether it is a city, county or state, may have sovereign immunity. For example, Georgia State Patrol troopers who engage in a pursuit to apprehend a traffic violator are "providing law enforcement" and are immune from suit.[58]

Additionally by statute, city and counties are liable for damages arising from the use of a motor vehicle only if they purchase liability insurance and that liability is limited to the amount of insurance purchased.[59]

The presence or absence of immunities, however, should not be considered when deciding what policy to promulgate regarding pursuits. Even when the law provides immunity, the safety of the public should always be considered in weighing the risks inherent in pursuing or in allowing the fleeing violator to escape.

2. 42 U.S.C. 1983 Lawsuits

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[57] *Cameron*, 274 Ga. at 125.

[58] *See Blackston v. Georgia State Patrol*, 274 Ga. App. 373, 374 (2005). In a case involving fire protection decided on June 26, 2006, the Georgia Supreme Court held that the exception to the waiver of sovereign immunity for "providing law enforcement" found in OCGA § 50-21-24 (6) authorizes "the application of sovereign immunity to the making of policy decisions by state employees and officers . . . and to the acts and omissions of state employees and officers executing and implementing those policies." *Georgia Forestry Comm'n v. Canady*, 2006 Ga. LEXIS 461 *14 (June 26, 2006). It is unknown whether this ruling will affect the well-settled law of *Blackston v. Georgia State Patrol* regarding the "providing law enforcement" exception as applied to pursuits by the Georgia State Patrol; however it seems unlikely that it will, as pursuits are the "execution" of a policy decision.

[59] *Cameron*, 274 Ga. at 126 (discussing O.C.G.A. § 33-24-51).

In addition to negligence lawsuits, a lawsuit pursuant to 42 U.S.C. 1983 ("Section 1983") may arise out of a police pursuit. Section 1983 allows a citizen to bring a lawsuit against a police officer for a violation of the citizen's constitutional rights. There are two types of Section 1983 suits: (1) those where the injury occurred by accident; and (2) those where the officer intentionally makes contact with the fleeing violator's vehicle.

In cases when the officer accidentally makes contact with the suspect or the suspect's vehicle, the claim is brought pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution and is unlikely to succeed. In 1998 in the case of *County of Sacramento v. Lewis*,[60] the United States Supreme Court considered whether an accident between a deputy and a motorcycle passenger resulting in death to the passenger would violate the Due Process Clause of the Fourteenth Amendment.[61]

The deputy responded to a fight call and was returning to his car after handling the call when he observed a motorcycle with two people approaching at a high rate of speed. The deputy attempted to stop the motorcycle by turning on his lights and yelling at the boys to stop. The motorcycle maneuvered between the police cars and sped off. The pursuit was described as follows:

> For over 75 seconds over a course of 1.3 miles in a residential neighborhood, the motorcycle wove in and out of oncoming

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[60]523 U.S. 833 (1998).

[61]The Due Process Clause states that "no State shall . . . deprive any person of life, liberty, or property, without due process of law." *Lewis*, 523 U.S. at 840 (quoting U.S. CONST., Amend. 14, § 1).

> traffic, forcing two cars and a bicycle to swerve off the road. The motorcycle and patrol car reached speeds up to 100 miles an hour, with [the deputy] following at a distance as short as 100 feet; at that speed, his car would have required 650 feet to stop.
>
> The chase ended after the motorcycle tipped over as Willard tried a sharp left turn. By the time [the deputy] slammed on his breaks, [the driver] was out of the way but [the passenger] Lewis was not. The patrol car skidded into him at 40 miles an hour, propelling him some 70 feet down the road and inflicting massive injuries. Lewis was pronounced dead at the scene.[62]

In the lawsuit, Lewis' family argued that the deputy violated Lewis' Fourteenth Amendment right to due process by causing his death through deliberate or reckless indifference to life in a high speed automobile chase aimed at apprehending a suspect. The Supreme Court disagreed and held that the Due Process Clause is only violated when there is arbitrary conduct that shocks the conscience.[63] The Court explained that "a police officer deciding whether to give chase must balance on one hand the need to stop a suspect and show that flight from the law is no way to freedom, and on the other, the high-speed threat to everyone within stopping range, be they suspects, their passengers, other drivers, or bystanders."[64] The Court concluded that there was

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[62] *Lewis*, 523 U.S. at 837.

[63] *Lewis*, 523 U.S. at 846.

[64] *Lewis*, 523 U.S. at 853.

no intent by the deputy to cause physical harm to Lewis and consequently no violation of his due process rights.[65] Significantly, however, the Court noted that its finding of constitutional violation did not imply anything about the appropriate treatment of this case under state negligence law.[66]

As the standard for a Due Process Clause violation is so high, it is unlikely that there will be a successful claim if the injuries occur due to an accident.[67] There is, however, another type of constitutional claim that may be brought pursuant to Section 1983. A Fourth Amendment claim may be brought when an officer intentionally makes contact with a suspect vehicle by ramming the vehicle or using a dead man's roadblock.

In Brower v. County of Inyo[68] decided in 1989, the United States Supreme Court considered a case involving what has been described as a "deadman roadblock."[69] Police had chased a stolen vehicle at high speeds for approximately 20 miles.[70] The driver Brower was killed when he crashed into a

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[65]*Lewis*, 523 U.S. at 853-54.

[66]*Lewis*, 523 U.S. at 854.

[67]*See White v. Polk County*, 2006 U.S. Dist. LEXIS 22060 *16 (April 21, 2006) ("Defendants cite numerous cases in their memorandum for the proposition that rarely, if ever, does a high-speed chase shock the judicial conscience in the constitutional sense.").

[68]489 U.S. 593 (1989).

[69]*Harris v. Coweta County, Georgia*, 433 F.3d 807, 812 (11th Cir. 2005).

[70]*Brower*, 489 U.S. at 594.

police roadblock. The roadblock was an 18-wheel tractor-trailer placed across both lanes of the two-lane highway in the path of Brower's flight.[71] The roadblock was "'effectively concealed' by placing it behind a curve and leaving it unilluminated, and . . . position[ing] a police car, with its headlights on, between Brower's oncoming vehicle and the truck, so that Brower would be 'blinded' on his approach."[72]

The Court first held that the placement of this particular roadblock which was designed to produce a stop by physical impact if voluntary compliance did not occur was a seizure within the meaning of the Fourth Amendment.[73] A seizure is "a governmental termination of freedom of movement through means intentionally applied."[74] "Brower was meant to be stopped by the physical obstacle of the roadblock – and . . . was so stopped."[75] The next question will be whether the seizure was reasonable because the Fourth Amendment only prohibits "unreasonable" seizures. The Court held that a jury may conclude that the circumstances of the roadblock, particularly the use of headlights to blind Brower, resulted in an unreasonable seizure in violation of the Fourth Amendment.[76]

Brower is the first United States Supreme Court case

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[71] *Brower*, 489 U.S. at 594.

[72] *Brower*, 489 U.S. at 594.

[73] *Brower*, 489 U.S. at 598-99.

[74] *Brower*, 489 U.S. at 597.

[75] *Brower*, 489 U.S. at 599.

[76] *Brower*, 489 U.S. at 599.

involving a pursuit. It teaches that a roadblock may be an unreasonable seizure in violation of the Fourth Amendment when officers set up the roadblock in such manner that it is likely to kill the driver. Accordingly, a roadblock must be set up in a reasonable manner, such as a roadblock at the end of a long straightaway that gives the driver the option of stopping.[77]

The United States Supreme Court has not yet decided a case involving a ramming of a suspect's car during a pursuit. The United States Court of Appeals for the Eleventh Circuit, which covers Georgia, Florida and Alabama, however, has decided such a case. In 2005, the Eleventh Circuit decided the case of Harris v. Coweta County, Georgia.[78] A Coweta County Sheriff's Department deputy clocked Harris traveling at 73 mph in a 55 mph zone.[79] The deputy pursued and Harris fled. Harris traveled at speeds between 70-90 mph, passed vehicles on double yellow control lanes, and ran two red lights. The deputy was able to obtain a tag number on the suspect vehicle at the beginning of the pursuit. After requesting permission from a supervisor to perform the PIT ("Precision Immobilization Technique"), another deputy who had joined the pursuit determined that Harris was traveling too fast for the maneuver.[80] The deputy then rammed Harris' vehicle, causing the vehicle to crash and

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[77] *Brower*, 489 U.S. at 598 (distinguishing between roadblock "designed to give the oncoming driver the option of a voluntary stop (e.g., one at the end of a long straightaway), and a roadblock that is designed precisely to produce a collision (e.g., one located just around a bend)").

[78] 433 F.3d 807 (11th Cir. 2005).

[79] *Harris*, 433 F.3d at 810.

[80] *Harris*, 433 F.3d at 810-11.

leaving Harris a quadriplegic.[81] At the time, the county's pursuit policy stated that "deliberate physical contact between vehicles at anytime may be justified to terminate the pursuit upon the approval of the supervisor."[82] Additionally the pursuing deputy was not trained to perform the PIT.[83]

The court first determined that the ramming by the deputy was a seizure. Citing *Brower*, the court found that "using a vehicle to stop and apprehend a suspect is a seizure."[84] Next the court considered whether the use of the vehicle was deadly force. The court concluded that this was deadly force. It reasoned:

'Deadly force' is force that creates 'a substantial risk of causing death or serious bodily injury.' . . . Like other instrumentalities, the use of an automobile cannot be construed in every circumstance as deadly force. However, an automobile, like a gun, can be used deliberately to cause death or serious bodily injury. . . . Under an objective view of the facts of this case, there is little dispute that the ramming of Harris' car could constitute a use of 'deadly force' and that a jury could so reasonably conclude.[85]

As the use of the automobile to ram the Harris' car was deadly force, the next question was whether it was a reasonable use of deadly force. According to *Tennessee v.*

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[81] *Harris*, 433 F.3d at 811.

[82] *Harris*, 433 F.3d at 810 n2.

[83] *Harris*, 433 F.3d at 810-11.

[84] *Harris*, 433 F.3d at 812.

[85] *Harris*, 433 F.3d at 821.

Garner, deadly force may be authorized in two limited circumstances:

(1) 'where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others,' or 'if the suspect threatens the officer with a weapon or there is probable cause to believe that he had committed a crime involving the infliction or threatened infliction of serious physical harm,' and (2) if deadly force is 'necessary to prevent escape,' and, (3) 'if, where feasible, some warning has been given.'[86]

The court found that none of these conditions were present to justify the use of deadly force. It reasoned as follows:

> 'Harris' infraction was speeding (73 mph in a 55 mph zone). There were no warrants out for his arrest for anything, much less for the requisite 'crime involving the infliction or threatened infliction of serious physical harm.' Indeed neither [the deputy who rammed Harris] nor [the supervisor] had any idea why Harris was being pursued. The use of deadly force is not 'reasonable' in a high-speed chase based only on a speeding violation and traffic infractions where there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and Harris remained in control of his vehicle, and there is no question that there were alternatives for a later arrest. The Garner Court specifically recognized that it would be

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[86]*Harris*, 433 F.3d at 813 (quoting *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985)).

> an anomaly to transform 'every fleeing misdemeanant into a fleeing felon . . . solely by virtue of his flight.' A high-speed chase of a suspect fleeing after a traffic infraction does not amount to the 'substantial threat' of imminent physical harm that Garner requires before deadly force can be used.[87]

The court also concluded that the deputy who rammed Harris was not entitled to qualified immunity because he had fair warning from prior decisions that the use of deadly force in this case was unconstitutional.[88]

With regard to the supervisor who had authorized the use of the PIT maneuver, the court concluded that he was entitled to summary judgment because he did not authorize deadly force.[89] The evidence submitted to the court regarding the PIT maneuver was that it was "a driving technique designed to stop a fleeing motorist safely and quickly by hitting the fleeing car at a specific point on the vehicle, which throws the car into a spin and brings it to a stop." The court pointed out that this assumes that "the maneuver will be executed at lower speeds by properly trained officers, and therefore can terminate a flight 'safely.' "[90] In assuming that the PIT maneuver can only be executed at "lower speeds," the Eleventh Circuit did not have the benefit of the research conducted by the Georgia Institute of Technology and discussed infra that indicates that the PIT maneuver can be

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[87] *Harris*, 433 F.3d at 815 (citations omitted).

[88] *Harris*, 433 F.3d at 820-21.

[89] *Harris*, 433 F.3d at 817.

[90] *Harris*, 433 F.3d at 817.

safely executed at higher speeds.

In sum, *Harris v. Coweta County* stands for the proposition that intentional ramming of a fleeing violator is the use of deadly force. The use of deadly force may be objectively reasonable under the specific facts and circumstances; however, the officer should only use deadly force when it is authorized by the standard set forth in *Tennessee v. Garner*. The *Harris* case does identify examples of cases where suspects have used their vehicles in such a manner as to make the vehicle a deadly weapon. For example, courts have authorized the use of deadly force when suspects have:

> (1) used an automobile to "run down an officer;"[91]
>
> (2) used the automobile to "ram, run over, side-swipe, or swerve" into officers;[92] or
>
> (3) intentionally driven "head-on" into the officer's vehicle.[93]

In such cases, the courts have concluded that the use of deadly force in the form of ramming a suspect's vehicle or discharging a firearm at the suspect was objectively reasonable under the circumstances.

IV. Policy Considerations

Every Georgia law enforcement agency that operates

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[91] *Harris*, 433 F.3d at 814.

[92] *Harris*, 433 F.3d at 816 n.11.

[93] *Harris*, 433 F.3d at 814.

vehicles with emergency equipment (blue lights and siren), regardless of its mission, should have a policy regarding pursuits. The need for good, sound policies and procedures is important in any organization. Promulgating policies provides a map for employees to follow, provides management the authority to oversee operations, and enhances the operations of any organization. This need is critical for law enforcement agencies, because by the very nature of the profession, the ability to harm others and take a human life constantly exists.

Each agency's pursuit policy will vary depending upon its mission, size, location and jurisdiction. For these reasons, the Committee is not recommending a statewide pursuit policy. A statewide pursuit policy would not take into account the disparity in missions of municipal, county and state police agencies.

When preparing the agency policy, however, there are some areas that should be addressed in every pursuit policy. These areas include (1) definition of terms; (2) initiation of pursuits; (3) pursuit procedures; (4) ending the pursuit; (5) review of pursuits; and (6) training. It is important to recognize that the determination of what policy to implement in each of these areas is a decision for each agency to make based upon its size, mission and location. The information that the Committee is providing in each area is to assist the agency in crafting its pursuit policy. As the International Association of Chiefs of Police states in its model policy entitled "Vehicular Pursuit":

> the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies;

> and the impact of varied agency resource capabilities, among other factors.[94]

With this guidance in mind and after reviewing Georgia law regarding pursuits, the Committee makes the following recommendations.

A. Definitions

The Committee recommends that the policy include a "Definitions" section to define key words. Definition of key words adds clarity to the document and ensures that the document as a whole is understood. Key words that may be defined, if used, include: (1) vehicle pursuit; (2) authorized law enforcement vehicle; (3) primary unit; (4) secondary unit; (5) inter-jurisdictional pursuits; (6) discontinue the pursuit; and (7) terminate the pursuit. Suggested definitions are as follows:

> Vehicle Pursuit: an active attempt by a law enforcement officer operating an authorized law enforcement vehicle to apprehend a fleeing suspect who is actively attempting to elude the police.[95]

> Authorized law enforcement vehicle: a motor vehicle belonging to a federal, state, or local law enforcement agency with a functioning audible signal and a functioning flashing or

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[94]International Association of Chiefs of Police Model Policy (hereinafter "IACP Model Policy"), Vehicular Pursuit, Oct. 1996 retrieved from http://www.theiacp.org/pubinfo/PolCtr on May 23, 2006.

[95]IACP Model Policy at 1.

revolving blue light.[96]

Primary unit: The authorized law enforcement vehicle that initiates a pursuit or any other unit, which assumes control of the pursuit.[97]

Secondary unit(s): Any authorized law enforcement vehicle that becomes involved as a backup to the primary unit and follows the primary unit at a safe distance.[98]

Inter-jurisdictional pursuit: Any vehicle pursuit that crosses into a neighboring jurisdiction, such as across the municipal, county or state line.

Discontinue the pursuit: the law enforcement officer ends his involvement in the pursuit by slowing down to the posted speed limit and turning off emergency lights and siren.

Terminate the pursuit: stopping a suspect vehicle by the use of intervention methods, such as [*Include Only Those Methods That Your Officers Have Received Training And/Or Have The Equipment To Utilize*] tire deflation devices (stop sticks), roadblocks, ramming, PIT maneuver, to stop the continued movement of the suspect vehicle.

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[96]O.C.G.A. § § 40-1-1 and 40-6-6.

[97]IACP Model Policy at 2.

[98]IACP Model Policy at 2.

In addition to these suggested definitions, policymakers should consider defining the intervention methods that the agency authorizes for terminating a pursuit. For example, if the agency authorizes the use of the PIT maneuver, then the term should be defined.[99] The definition of these key words and any other words used throughout the policy will assist officers in understanding and complying with the pursuit policy.

B. Initiation of Pursuit

First and foremost, policymakers should consider when a pursuit is authorized. Georgia law does not state when pursuits are authorized nor does it require officers to pursue. If an officer chooses to pursue, Georgia law requires that law enforcement officers drive with due regard for the safety of the public during the pursuit. Accordingly, the policy should address specific risks inherent in the pursuit and require the officer to weigh those risks as applied to the current situation. The officer will have to make the decision whether to pursue in a matter of seconds, so the policy must provide clear guidance.

1. Authorized Pursuits

At the outset of the pursuit policy, officers must be told when the agency authorizes the pursuit of a fleeing suspect. As discussed, each agency's policy will be different depending on variables such as its mission, size and location. Police pursuit policies may be either restrictive or judgmental as to the officer's authorization to pursue. Restrictive policies are those where "the officer may only

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[99]This paper will define the term "PIT maneuver" in Section V *infra*.

pursue given the existence of certain well-defined criteria."[100] Judgmental, or discretionary, policies are those "where the officer may decide whether or not to pursue based upon certain factors."[101]

Policymakers should first determine whether a restrictive or judgmental policy is appropriate for their agency. Municipal police agencies may choose to have a restrictive policy because their jurisdiction is primarily urban and suburban. Studies have shown that "municipal agencies, for example, were significantly more likely to restrict pursuits to felony incidents (19 percent) than were their county counterparts (11 percent)."[102] Whereas many county or state police agencies may choose to have a judgmental policy due to the type of roadways in their jurisdiction (many highways and interstates to patrol) and their mission. It is important to recognize that a judgmental policy still requires the officer to determine whether the danger to the public from the pursuit outweighs the benefits of the pursuit.

In considering a restrictive policy, the simplest way to make the decision about which pursuits will be authorized is to formulate the policy in terms of the nature of the charges and the driver's current behavior in relationship to the danger it creates to the public. Officers are familiar with the difference between a minor traffic violations, serious traffic violations, misdemeanor and felony offenses. Taking into account the

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[100]Pipes, Chris and Dominick Pape, *Police Pursuits and Civil Liability,* FBI LAW ENFORCEMENT BULLETIN, 16, 17 (Jul. 2001).

[101]Pipes et al. at 17.

[102]Kenney, Dennis J. and Geoffrey P. Alpert, *A National Survey of Pursuits and the Use of Police Force: Data from Law Enforcement Agencies,* 25 *J. Crim. Just.* 315, 320 (1997).

nature of the agency's mission and jurisdiction, the policymaker should carefully consider the following questions:

> Should the agency permit pursuits for minor traffic violations such as failure to stop for a stop sign?
>
> Should the agency permit pursuits for serious traffic violations such as driving while impaired or speeding in excess of 15 miles per hour over the posted speed limit?
>
> Should the agency permit pursuits for misdemeanor offenses?
>
> Should the agency allow pursuits for felony offenses?
>
> Should the agency allow pursuits for serious felony offenses and/or forcible felonies?
>
> Should the agency allow pursuits when the violator has created a danger to the public that warrants immediate action in the form of a pursuit?
>
> Should the agency allow a pursuit when, prior to any law enforcement contact, the violator is already operating a motor vehicle in a hazardous manner and the violator's hazardous driving presents a continuing significant threat to the safety of the public?

Once the policymaker has considered these questions, the restrictive pursuit policy should provide the answers to these

questions. As this is probably the most crucial part of pursuit policy formation, the Committee will provide three examples of restrictive pursuit policy language that addresses which pursuits are authorized by the agency. It is important to recognize that these agencies are policing in primarily urban and suburban areas. And as stated, each policymaker should create policy based upon their agency's unique characteristics.

Valdosta Police Department is responsible for providing law enforcement to the City of Valdosta, Georgia. The Police Department consists of 132 sworn personnel, 21 non-sworn support personnel and 18 part-time employees. The 104 members of the Patrol Bureau are responsible for the initial response to calls for service from the 50,000 citizens of Valdosta. This bureau is also responsible for the Traffic Unit, Power Squad, the Special Response Team, and the K-9 Unit.[103] Their pursuit policy permits the initiation of a pursuit in the following circumstances:

> Valdosta Police Department General Order 200-41
>
> 7. Nature of charges – Officers may initiate a vehicle pursuit under the following circumstances:
>
> a. For person (s) suspected of a forcibly felony or when an officer has articulable reasonable suspicion or probable cause that an extraordinary danger exists that warrants immediate

[103]Retrieved from http://www.valdostacity.com/CityDepartments/index.cfm?Fuseaction=Police on May 23, 2006.

action and necessitates a vehicle pursuit or;

b. Prior to any police contact, the officer observes that the person is driving or operating a motor vehicle or motorcycle in a hazardous manner and that person's hazardous driving presents a significant threat to the safety of others.

Officers will not normally pursue for misdemeanors or minor traffic violations, unless such violations meet the criteria as specified in (7.b.) above.[104]

Gwinnett County Police Department is responsible for providing law enforcement in Gwinnett County, Georgia. Gwinnett County is one of several counties that comprise the Metropolitan Atlanta area. It is primarily an urban/suburban county with both business and residential areas. Gwinnett County also has several incorporated cities within its boundaries, many of which have their own police department. Gwinnett County Police Department has 662 sworn officers. Gwinnett County Police Department permits pursuits under the following circumstances:

Gwinnett County Police Department Directive 426.00

Vehicular pursuits are prohibited unless there is probable cause to believe that the person(s) being pursued have committed or are

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[104]Valdosta Police Department General Order 200-41 at 2 (rev'd 01-01-06) (copy attached at Appendix C).

committing the following:

1. Murder, armed robbery, rape, kidnapping and aggravated battery; or

2. Any action that creates an immediate threat of death or serious bodily injury to another person or a substantial threat to the safety of another person.[105]

The Atlanta Police Department is the largest police department in Georgia with approximately 1,700 sworn officers. It is responsible for policing the City of Atlanta, which is an urban/suburban environment with a population of 420,000 people. The Atlanta Police Department Policy regarding pursuits authorizes pursuits only in the following circumstances.

> Atlanta Police Department SOP 3050 Pursuit Policy
>
> The following two conditions must be met before a police officer can engage in a vehicle pursuit.
>
> 4.1.1 First, the vehicles of the primary and secondary pursuit units must comply with the three applicable state codes of Georgia regarding the equipment of law enforcement vehicles. The codes are 40-8-90 (Use of flashing or revolving blue lights), 40-8-91

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[105]Gwinnett County Police Department General Order 426.00 at 1 (Sept. 24, 2006) (copy attached at Appendix D).

(Marking of official vehicles), and 40-8-94 (Sirens, whistles, and bells). In addition, the driver of the authorized emergency vehicle must drive with due regard for the safety of all persons as described in Georgia code 40-6-6 (Authorized emergency vehicles). (CALEA 41.2.2d)

4.1.2 Second, the driver of the fleeing vehicle or a passenger in the fleeing vehicle must meet one of the three following standards set forth in O.C.G.A. 17- 4-20 (Arrest Without a Warrant).

1. "The suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury."

2. "When the officer reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others."

3. "When there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm." (CALEA 1.3.2)[106]

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[106]Atlanta Police Department SOP 3050 Pursuit Policy at 3 (Aug. 18, 2004) (copy attached at Appendix E).

As mentioned, these sample policies are from agencies that police in primarily urban and suburban environments. In narrowly circumscribing what offender behavior justifies a pursuit, the policymakers are recognizing that the need to apprehend the offender does not usually outweigh the inherent risks of a pursuit in such an environment.

The International Association of Chiefs of Police Model Policy entitled "Vehicular Pursuit" best exemplifies a judgmental policy. In the section entitled "Initiation of Pursuit," it states:

> 1. The decision to initiate pursuit must be based on the pursuing officer's conclusion that the immediate danger to the officer and the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.
>
> 2. Any law enforcement officer in an authorized emergency vehicle may initiate a vehicular pursuit when the suspect exhibits the intention to avoid apprehension by refusing to stop when properly directed to do so. Pursuit may also be justified if the officer reasonably believes that the suspect, if allowed to flee, would present a danger to human life or cause serious injury.
>
> 3. In deciding whether to initiate pursuit, the officer shall take into consideration:
>
> a. road, weather and environmental conditions;
> b. population density and vehicular and pedestrian traffic;

c. The relative performance capabilities of the pursuit vehicle and the vehicle being pursued;
d. The seriousness of the offense; and
e. The presence of other persons in the police vehicle.[107]

It is important to recognize that a judgmental policy does not mean that officers will always initiate the pursuit or, conversely, will never discontinue the pursuit. The essence of a judgmental policy is that the officer at all times – prior to initiation and during the pursuit, weighs the risks of the pursuit versus the danger to the public in allowing the suspect to remain at large. Such a policy is particularly appropriate for agencies that must patrol the state's interstates and highways,[108] such as state police agencies, sheriff's departments and those municipal agencies with interstates running through their jurisdictions.

2. Factors to Consider When Pursuit is Authorized

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[107]IACP Model Policy at 2.

[108]Implicit in patrol of the interstates and highways is the need to apprehend suspects who present a grave danger to the public through their actions, but have not committed a felony. There are three crimes in Georgia that are only misdemeanor offenses, yet by definition present a danger to the public. For example, drag racing and reckless driving are only misdemeanor crimes in Georgia. *See* O.C.G.A. §§ 40-6-186 and 40-6-390. Another crime presenting a danger to the public is aggressive driving, which is defined as operating "any motor vehicle with the intent to annoy, harass, molest, intimidate, injure, or obstruct another person." O.C.G.A. § 40-6-397. Aggressive driving is also classified as a misdemeanor – although of a high and aggravated nature. To promulgate a restrictive pursuit policy that would prohibit pursuit for these types of misdemeanor traffic violations where the driver's actions are creating a great danger to the public prior to the initiation of the pursuit would ultimately result in less safe roads in Georgia.

It may be that a pursuit is authorized under the policy but due to the current factors or conditions, it is not safe to pursue. A pursuit may create an even greater danger to the public than that posed by the violator being allowed to escape. The Atlanta Police Department policy frames it this way: "Once the two required conditions exist, other factors that need to be considered in order to initiate a vehicle pursuit or allow a vehicle pursuit to continue are"[109] and then lists the other factors. Reviewing this policy and others, this is a list of other factors to consider in determining whether to initiate a pursuit:

> Volume of traffic – both vehicular and pedestrian;
> Location of pursuit – urban, suburban or rural area;
> Driving abilities of the police officer;
> Condition of the authorized emergency vehicle;
> Weather conditions;
> Road surface conditions – contours of road, construction zones, poor road conditions, and narrow roads may affect vehicle performance at high speeds;
> Speeds involved;
> Divided highways and vehicles traveling the wrong way on divided highways.

In addition to considering these factors in deciding whether to initiate a pursuit, the policy should direct the officer and/or supervisor to keep these considerations in mind during the entire pursuit. It may be that conditions change

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[109]Atlanta Police Department SOP 3050 Pursuit Policy at 4.

and make the continuation of the pursuit too dangerous.[110]

The decision to initiate a pursuit will be made in seconds. The pursuit policy, however, will be carefully considered by policymakers who weigh the risks of the pursuit versus the danger to the public from the suspect remaining at large. Addressing which pursuits are authorized in the policy permits policymakers the opportunity to train officers. Additionally, it provides the means to address policy violations through training and/or appropriate disciplinary action.

C. Pursuit Procedures

When developing the pursuit policy, the agency should consider the roles and responsibilities of all enforcement and non-enforcement personnel involved during the pursuit. The policy should provide for clear communications to ensure that resources are deployed to control and minimize danger to others and also to allow officers and their supervisors to make the best decisions possible from that information.

1. Responsibilities of the Primary Unit, Communications, Secondary Unit and Supervisor

The policy should address the responsibilities of the primary unit, communications secondary unit(s) and the supervisors. When a vehicle pursuit is initiated, the primary unit should immediately activate his emergency lights and siren. During the pursuit, the primary unit should report the following

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[110]Recall *Wilson v. City of Atlanta* where the officer discontinued the pursuit and slowed to normal speeds when the traffic became heavier. 223 Ga. App. 144, 147 (1996). The court granted summary judgment to the officer and concluded that the officer did not act with reckless disregard for the safety of others.

information to the dispatcher and/or supervisory personnel:

a. Unit number and the fact that he is in pursuit;
b. The location and direction of travel;
c. Description of the vehicle (make, color, tag #, etc.) and occupants (race, sex, number, etc.);
d. Reason for the pursuit;
e. Changes in location and direction of travel during the pursuit; and
f. Location at the time the pursuit is discontinued.

Once notified of the pursuit, the dispatcher should:

a. Record all information received from the pursuing officer;
b. Convey relevant information to the Shift Supervisor and responding units;
c. Advise all units to clear the radio for emergency traffic only;
d. Conduct an inquiry of the license plate number through the N.C.I.C. and G.C.I.C. computer systems;
e. Notify adjacent jurisdictions of the pursuit and the potential for the pursuit entering their jurisdiction; and
f. Monitor the pursuit via radio transmissions.

Upon notification of the pursuit, the supervisor should consider the following:

a. Asserting control over the pursuit and the discretion to order specific units into or out of the pursuit;

b. Controlling which and how many (back-up) units enter into an active pursuit;
c. Ordering field units to clear intersections in the likely path of the pursuit;
d. Authorizing termination of the pursuit by approved methods; and
e. Discontinuing the pursuit any time the risks of the pursuit outweigh the danger to the public from the suspect remaining at large.

With regard to secondary units, the policy should address how many secondary units are authorized to assist. It may be that the policy only authorizes one secondary unit to operate with emergency equipment and provide for the other units to follow at a safe distance in compliance with the traffic laws. Consideration should be given to avoiding numerous police vehicles operating in the emergency mode; however, there is also a need to have secondary units to provide assistance to the primary unit. Secondary units authorized to participate in the pursuit should have their emergency equipment operating. The policy may want to limit the involvement of unmarked units during pursuits where a marked unit is available to take over the pursuit. Another possible utilization of the secondary unit is for that unit to handle the radio traffic to permit the primary unit to concentrate on pursuing the suspect vehicle.

2. Inter-jurisdictional Pursuits

The pursuit policy also should address inter-jurisdictional pursuits in two contexts: (1) a pursuit initiated by the agency that goes into another jurisdiction; and (2) a pursuit initiated by another agency entering and/or leaving the agency's jurisdiction. With regard to the pursuits entering the agency's jurisdiction, the policy should address the following:

a. Provide guidance regarding the role the agency will play the pursuit;
b. Address whether officers may become involved in an inter-jurisdictional pursuit;
c. Provide guidance about whether officers, if permitted to join the interjurisdictional pursuit, may continue to assist with the pursuit after it has left the agency jurisdiction, to include crossing state lines;
d. Supervisory oversight of involvement in the inter-jurisdictional pursuit;
e. Responsibility for notifying neighboring jurisdictions and requesting their assistance; and
f. Providing guidance regarding turning over the lead of the pursuit or the pursuit in its entirety to another jurisdiction such as the Georgia State Patrol or the agency having primary jurisdiction.

By outlining the procedures to follow during a pursuit, the policy ensures that the minimal number of officers will be involved in the pursuit and also defines the actions that should occur once the pursuit leaves a particular jurisdiction. This allows for better management and control of the pursuit from beginning to the end. And with all policy recommendations, addressing it on the front end allows for training of all officers prior to the pursuit.

3. Unmarked Vehicles

The policy should also address whether unmarked vehicles may participate in the pursuit. An unmarked car will not be as visible to other members of the public, although it must have the emergency equipment required by law to be used in a pursuit. Therefore it may be wise to limit the use of

unmarked cars to serious felonies. For example, the City of LaGrange Police Department Policy 12.11 states:

> Emergency Operation of Vehicles During Pursuits
>
> 1. Only marked vehicles with roof-mounted emergency light systems should engage in a pursuit.
>
> 2. Police vehicles that are slick top, but are equipped with intersection lights, and have all the police markings on the sides and back of the police vehicle are allowed to be involved in pursuits.
>
> 3. Unmarked vehicles will not become involved in any pursuit unless it involves a serious felony. No unmarked vehicle, without both blue lights and siren, will become involved in pursuits.[111]

According to Kenney and Alpert in their article "A National Survey of Pursuits and the Use of Police Force: Data from Law Enforcement Agencies," municipal agencies are more likely to restrict pursuits to marked units than county agencies "(64 percent vs. 53 percent)."[112] Again this is a determination each agency should make based upon the unique variables of their community.

D. Ending the Pursuit

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[111]LaGrange Police Department Vehicle Operations at 12.11 (rev'd 2-28-05) (copy attached at Appendix F).

[112]Kenney and Alpert at 320.

When developing the pursuit policy, the policymaker should determine the circumstances when discontinuing or terminating the pursuit is appropriate. During a pursuit, the need to apprehend the suspect should always outweigh the level of danger created by the pursuit. When the immediate danger to the public created by the pursuit is greater than the immediate or potential danger to the public should the suspect remain at large, then the pursuit should be discontinued or terminated.

1. Discontinuing the Pursuit

It is very important for the policy to address when the pursuit will be discontinued. As defined *supra*, discontinuing a pursuit occurs when the law enforcement officer ends his involvement in the pursuit by slowing down to the posted speed limit and turning off the emergency lights and siren. In the absence of any viable and timely method of terminating the pursuit, discontinuing a pursuit should occur when the danger to the public is greater from the pursuit than the danger to the public should the suspect escape.

In addition to this paramount consideration, pursuits should usually be discontinued when the violator's identity has been established to the point that later apprehension can be accomplished without danger to the public. Finally, a pursuit should be discontinued when the violator's vehicle location is no longer known.

2. Terminating the Pursuit

As defined *supra*, terminating a pursuit occurs when the officer uses intervention methods, such as tire deflation devices (stop sticks), roadblocks, ramming, or the PIT maneuver, to stop the continued movement of the suspect vehicle. The pursuit policy should address only those

methods that the officer has been trained to use. Additionally, the pursuit policy should address when these intervention methods may be used. For example, the Georgia State Patrol policy regarding stationary roadblocks states:

> Stationary roadblocks will be used only in extraordinary circumstances and only with the permission of an NCO or commissioned officer. No stationary roadblock shall be set up on a hillcrest or in a curve. The roadblock must be visible from a sufficient distance to allow the suspect the opportunity to safely stop.

With regard to these methods, the policy may want to require officers to consider various intervention methods prior to utilizing others. For example, the Georgia State Patrol policy states that the PIT maneuver "should not be used until other methods for stopping a fleeing vehicle (e.g. tire deflation devices and roadblocks) have been considered and determined not to be feasible." As discussed in the legal section of this paper, the use of these intervention methods will be considered a Fourth Amendment seizure by the courts and must be objectively reasonable.

a. Tire Deflation Devices

There are some specific considerations which should be addressed regarding tire deflation devices, such as stop sticks or spike strips. Specifically, the policy should address the circumstances that warrant the use of the device, and whether a supervisor needs to approve the use. The policy should incorporate or reference the manufacturer's recommendations as to speed for deployment and any limitations on use. For example, some stop sticks may only be used at speeds greater than 25 mph and may not be used

on motorcycles. Additionally, all enforcement personnel involved in the pursuit should be notified of the location where the devices have been deployed.

b. Roadblocks

If feasible and personnel are available to create it, a roadblock may be used when the suspect is creating a danger to the public. The use of the roadblock will be a Fourth Amendment seizure and must be objectively reasonable. Policy considerations include the following:

1. Requiring the approval of the roadblock by the supervisor;
2. Utilizing marked patrol vehicles with the emergency lights and headlights activated, but not intentionally directed to blind the driver of the pursued vehicle;
3. Ensuring that officers are not inside any vehicles used in the roadblock;
4. Requiring that the roadblock be clearly visible and there is an adequate warning to allow vehicles to come to a safe stop;
5. Taking into account road and weather conditions when considering stopping distance and visibility;
6. Setting up the roadblock to prevent civilian vehicles traveling into the area of the roadblock;
7. Communicating to all law enforcement personnel, including other participating agencies, involved in the pursuit of the decision to deploy a roadblock and its location; and
8. Addressing the use of civilian vehicles when constructing the roadblock.

With regard to the visibility of the roadblock, recall the case of *Brower v. County of Inyo*, where the roadblock was set up on a curve and a spotlight was directed so as to blind the driver as he rounded the curve. *Brower* teaches law enforcement that the roadblock must be visible and there must be enough distance for the driver to stop his vehicle safely. For these reasons, some policies mention a specific number of feet (500 or 1000 feet), while others state only that the roadblock must be visible from a sufficient distance to allow the suspect the opportunity to stop safely. Setting a specific distance may not be wise because it is unlikely that there will be time to measure the distance and also 500 feet may not be enough distance to stop if the roads are wet, speeds are high (over 100 mph) and the suspect's perception and reaction time is slow. If, however, the policy does not set a distance, training should address the variables that are factored into stopping distances.

If the agency uses and trains regarding mobile or rolling roadblocks, the policy should also address at what speeds and under what circumstances that the rolling roadblock should be utilized.

c. PIT Maneuver

As with the roadblock, the use of the PIT maneuver is a seizure and must comport with the reasonableness requirements of the Fourth Amendment. Accordingly, the policy should describe the circumstances that warrant the use of the PIT. For example, the Georgia State Patrol pursuit policy permits the use of the PIT maneuver when the "trooper or troopers in the pursuit determine that the fleeing vehicle must be stopped immediately to safeguard life and

preserve public safety."[113] The policy also carefully delineates the factors to consider before utilizing the PIT maneuver.

> Georgia Department of Public Safety Policy No. 1702 Pursuits
>
> 4. PIT Maneuver
>
> a. If the trooper or troopers in the pursuit determine that the fleeing vehicle must be stopped immediately to safeguard life and preserve public safety, the PIT maneuver may be used.
>
> b. The PIT maneuver shall only be used by troopers in accordance with Department training received on the PIT maneuver.
>
> c. The PIT maneuver should not be used until other methods for stopping a fleeing vehicle (e.g. tire deflation devices and roadblocks) have been considered and determined to be not feasible.
>
> d. The PIT maneuver should be used only when the danger from the continued pursuit is greater than the danger associated with using the maneuver to end the pursuit. Before

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[113]Georgia Department of Public Safety Policy 17.02 Pursuits at 5 (8/25/2005).

the PIT maneuver is used, factors that affect the safety of using the technique should be considered. These factors include:

1) Condition of the road:
   a) Wet or dry
   b) Width
   c) Divider or other obstruction
   d) Roadside obstructions (trees, ditches, buildings, etc.)

2) Visibility:
   a) Distance ahead
   b) Darkness

3) Traffic volume:
   a) Anticipated volume due to time of day (school hours, commuter traffic)
   b) Actual volume based upon observation

4) Pedestrian traffic:
   a) Anticipated volume due to location (school or college nearby, industrial area)
   b) Actual volume based upon observation

5) Type of fleeing vehicle:
   a) Pickup truck (high

center of gravity, narrow wheel base)
b) Small car (narrow wheel base, small tires)
c) Van (high center of gravity, narrow wheel base)

6) Occupants:
a) Number of people in the vehicle
b) Whether children are visible in the vehicle
c) Whether the occupants are wearing seatbelts
d) Whether the windows are down

7) Reasonable speed as determined by the following factors:
a) Whether the violator is showing total disregard for public safety
b) Whether the violator is slowing but not stopping for stop signs or other traffic control devices
c) Whether the violator is darting at other vehicles
d) Whether the violator is driving on the wrong

side of the road
e) Whether the violator is running other motorists off the road

e. The PIT maneuver is considered a use of force and the trooper's individual actions must be objectively reasonable. The trooper will consider all the factors listed above, including his experience, his abilities, and the danger of continuing the pursuit. The PIT maneuver will only be executed when the need to stop the pursuit is immediate. The trooper must be able to articulate the reason for his actions.

f. The PIT maneuver shall not be used to stop a pursuit with a motorcycle or ATV.

Another consideration, which will be discussed in detail infra, in the utilization of the PIT maneuver, is that it may be more hazardous when used on vehicles with a high center of gravity such as vans and Sports Utility Vehicles (SUV). Consequently, the policy may want to direct the officer to consider the speed of the vehicle when deciding to use the PIT maneuver on certain vehicles.

d. Deadly Force

There are two other methods of terminating a pursuit – ramming and the use of a firearm, and both are considered deadly force by the courts. When the suspect is creating an imminent threat of serious bodily harm or loss of life, the use of deadly force will be reasonable. The pursuit policy, however, should specifically address this.

Discharging a firearm at a moving vehicle should be addressed in the pursuit policy. For example, the Valdosta Police Department Vehicle Pursuit policy states:

> Firing from or at a moving vehicle or its occupants will only be deemed acceptable when the officer involved can demonstrate an articulable exigent circumstance which makes this action necessary for the protection of human life from an imminent threat of serious bodily harm or loss of life. Discharging a firearm from a moving vehicle is discouraged in any event.[114]

When using a firearm, however, the officer should be intending to disable the driver, not merely to stop the vehicle. The Atlanta Police Department Pursuit Policy states:

> Police officers will not discharge their firearm in an effort to stop a fleeing vehicle. (This does not prohibit a police officer from using his or her firearm as a lethal force option when it is reasonable and necessary.)

Another way to handle the issue of firing at a vehicle is to reference the agency's use of force policy. For example, the Georgia Bureau of Investigation Directive 4-3 Vehicle Stop, Pursuit and Emergency Vehicle Operations policy states: "Firearms shall not be discharged at any moving vehicle unless the use of deadly force is justified in accordance with the provisions of Investigative Division Directive 10-2."

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[114]Valdosta Police Department General Order 200-41 Vehicle Pursuit at 5 (01-01-06).

With regard to ramming which is also considered deadly force, the pursuit policy should also state when this is permissible or conversely, when it is not. The Valdosta Police Department has chosen to forbid the use of the police vehicle to stop a suspect vehicle. Specifically, the General Order directs that: "Officers may not attempt to stop a suspect vehicle in a pursuit by striking the suspect's vehicle with a police vehicle." The LaGrange Police Department's Vehicle Operations policy generally prohibits "forcible stops" except for stationary roadblocks as "a last resort" and with approval of the supervisor.

The Gainesville Police Department allows ramming only as a last resort, but provides very specific guidance. It states:

Ramming – Deliberate ramming or intentional physical contact between vehicles by an officer is considered a use of deadly force and should be only considered as a *last resort.* This action must be approved by the highest-ranking supervisor prior to its utilization.[115]

In sum, it is essential that the pursuit policy address discharging a firearm or ramming as such actions will be considered the use of deadly force and subject to the Fourth Amendment's reasonableness requirement.

E. Review of Pursuits

When developing the pursuit policy, the agency should consider a review process after each pursuit and on an annual basis. The purpose of the review is threefold: (1) to determine whether the pursuit complied with agency policy;

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[115]Gainesville Police Department Vehicular Pursuits No. 558 at 8 (10-07-04).

(2) to identify training needs; and (3) to observe any patterns of performance which have surfaced as a result.

In order to permit meaningful review of pursuits by the agency, the officer who acted as the primary unit and/or the supervisor should prepare a pursuit report. As part of this review, the officer and the supervisor should review any videos of the pursuit. The pursuit report should be reviewed through the officer's chain of command, to include the agency training section, policy development unit, and the agency internal affairs or Office of Professional Standards Unit.

In addition to annual reviews of pursuits, the agency may want to consider a review over a fiveyear period or more to see additional trends. For example in 2005, the LaGrange Police Department Office of Professional Standards conducted a review of all pursuits by the department since 1997.[116] The review determined that there were 164 pursuits in that time period, approximately 21 per year. It then addressed the reasons for the pursuits – 106 traffic violations, 16 felony violations, and 59 other misdemeanors. As a result of that review, it was recommended that the department modify the vehicle pursuit policy and "eliminate vehicle pursuits that do not relate directly to felony offenses or which put the general public in danger unless apprehended." In response to that review, the LaGrange Police Department changed its pursuit policy.

The benefits of such a review are many. First, the review was not precipitated by a serious injury or death of a suspect, citizen or police officer. Yet, the Office of Professional

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[116]January 5, 2005 Memorandum from Lt. J. Hall to Chief Louis M. Dekmar.

Standards recognized that serious injuries or death can occur in any pursuit and deemed the issue important enough to justify a review. Additionally, the policy change was recommended by the staff and consequently may be more likely to be accepted by the officers than something coming directly from the Chief. Lastly, if an injury or death does occur during an authorized pursuit, the policy change is excellent evidence regarding the care with which the department makes its policy decisions.

F. Training

In order to ensure that officers comply with the pursuit policy, the agency should provide training for officers on the pursuit policy. It is recommended that all newly appointed sworn personnel should not be assigned to enforcement duties until receiving training on the agency's pursuit policy. In addition, all sworn personnel should receive annual training on the pursuit policy. This is a requirement for agencies certified by the Georgia Police Accreditation Coalition[117] and is suggested by the Commission on Accreditation in Law Enforcement (CALEA) for CALEA accredited agencies. As pursuits are a high liability area, annual training makes sense.

For those agencies that utilize the PIT maneuver, roadblocks, or tire deflation devices, the annual training should refresh the officers regarding these techniques. The PIT maneuver should only be performed by those officers who have received training from a certified PIT Instructor or academy

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[117]State of Georgia Law Enforcement Certification Program Third Edition Standards at 1.11 located at http://www.gpacinc.com/resources.htm ("The agency has a written directive that requires each sworn officer receive annual training on . . . vehicle pursuits").

certified to teach the maneuver. Reviewing the use of these intervention techniques on an annual basis in training will remind officers of the proper use of the techniques.

Additionally as discussed, the review of the pursuit reports by the training section and the internal affairs unit may identify officers who need additional training either because the initiation of the pursuit did not comply with agency policy or because proper procedures were not followed during the pursuit. The additional training may include video footage of pursuits and a debriefing or analysis of the officer's actions in those pursuits. Such additional training will provide evidence that the agency enforces its policy and does not merely pay lip service to it.

Lastly, the agency command staff should foster an agency culture that positively recognizes those officers who discontinue pursuits that are creating a danger to the public when terminating the pursuit is not a viable option. It will always be hard for an officer to discontinue a pursuit and let the suspect go. The agency can recognize this good judgment on the part of an officer by noting it in the officer's evaluations and also in the pursuit files. The fact that an officer chose to discontinue a pursuit on one occasion will be excellent evidence that he clearly understands the need to balance the safety of the public with the need to apprehend in the event that another pursuit ends tragically. Additionally it provides strong evidence that the agency pursuit policy is being followed.

V. An Engineering Analysis of the PIT Maneuver

Throughout this paper, the Committee has recognized the dilemma posed by pursuits. The fleeing suspect creates a danger to the public – either due to his driving or past conduct, and often that danger was created prior to the

initiation of the pursuit. Guided by agency policy, the officer must choose whether to initiate a pursuit or not. In cases where the pursuit is initiated, every effort should be made to terminate the pursuit as quickly as possible.

The Committee decided to focus additional study on the PIT maneuver because, when properly utilized, it is a means to terminate pursuits safely. To this end, the Committee requested assistance from the George W. Woodruff School of Mechanical Engineering at the Georgia Institute of Technology ("Georgia Tech") to study the engineering and physics of the PIT maneuver. Before discussing this research, the Committee will briefly review the history of the PIT.

a. History of the PIT Maneuver

The Georgia State Patrol has been utilizing the PIT maneuver since 1997.[118] The decision to utilize the PIT maneuver was made to provide a means to "end a pursuit quickly and safely."[119] Developed more than two decades ago, the PIT maneuver was described by the National Institute of Justice in 1996 as a "potential alternative" to high-speed pursuits. Specifically, the article described the PIT as follows:

> Precision Immobilization Technique
>
> Known initially as "tactical ramming" or

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[118]Georgia Department of Public Safety, *Pursuits and the PIT Maneuver*, Prepared for the Georgia Board of Public Safety 1 (Dec. 7, 2005) (hereinafter "*Pursuits and the PIT Maneuver*").

[119]*Pursuits and the PIT Maneuver* at 1.

> "legal intervention," this maneuver was more fully developed and popularized more than a decade ago by BSR Inc., the Summit Point, West Virginia, advanced driver training center, as tactical vehicle interception (TVI), a formal training technique for law enforcement. The first large law enforcement agency to teach TVI as a technique to halt fleeing vehicles was the Fairfax County (Virginia) Police Department, which modified the program for police use and named it "precision immobilization technique" or PIT. The technique involves easing up to and making contact with a fleeing suspect's car in such a way as to cause the target car to snap sideways and come to a halt. While this technique is not applicable in every situation, the key to its effective use is to carefully choose a favorable spot before attempting PIT and to first consider the possible effects on other traffic and pedestrians."[120]

The California Highway Patrol has been utilizing the PIT since 1986.[121] Minnesota Highway Patrol and Fairfax County Police Department have been using it since 1988.[122]

Georgia State Patrol is the largest police agency in Georgia

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[120]National Institute of Justice, *High-Speed Pursuit: New Technologies Around the Corner*, U.S. Dept. of Justice (Oct. 1996) at 4-5.

[121]*Pursuits and the PIT Maneuver* at Att. 4 PIT Maneuver Training Syllabus at 4.

[122]*Id.*

that currently utilizes the PIT. As addressed earlier, the Georgia State Patrol's Pursuit Policy explains the factors that should be considered before using the PIT maneuver. The policy defines PIT as follows:

> Precision Immobilization Technique (PIT) - The intentional act of using a trooper's vehicle to physically force a fleeing vehicle from a course of travel in order to stop it. The PIT maneuver is a specific, technical maneuver which requires advanced practical training prior to use. When executed by properly trained members under reasonable and prudent circumstances, the PIT maneuver does not constitute deadly force. In other circumstances, the PIT maneuver may constitute deadly force and may only be used when authorized by law.[123]

In view of the Georgia State Patrol's extensive experience in training and using the PIT, the Committee asked its training staff to assist the Georgia Tech researchers.

b. Georgia Institute of Technology Research Project

In an effort to provide more guidance to policymakers, the Committee asked the faculty at Georgia Tech to research the safety of the PIT maneuver. Although the PIT has been used by law enforcement as an effective technique to terminate pursuits, it has never been studied by engineers. Dr. David M. Sanborn, Associate Chair for Undergraduate Studies of the George W. Woodruff School of Mechanical Engineering

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[123]Georgia State Patrol Policy No. 17.07 Pursuits at 2-3 (rev'd Aug. 24, 2005).

supervised a design project planned and executed by four seniors[124] as a research project in a mechanical engineering design class. The goal of the project was "to study the maneuver by using physical experimentation and computer simulations."[125] The study hypothesized that the PIT is a "controlled and predictable maneuver"[126] that does not cause the vehicle to rollover when performed properly.[127] This hypothesis tracks the experience of the Georgia State Patrol, which teaches its troopers that "after contact, a vehicle always travels in a direction that was reasonably predictable for use on the public highway."[128] Avoiding rollover is the key consideration because if there is no rollover, assuming the driver is wearing his seatbelt as required by law, then it is unlikely that there will be any serious injury or death as a result of the PIT maneuver. The study did not take into account "a crash that results from the vehicle skidding into another vehicle, person or object."[129]

The research project had two parts: (1) to measure the force applied from the police car to the target car during an actual

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[124]Three of the seniors, Zachary Barbre, William Hagler and Kirsten Lundstrom, graduated in May of 2006. The other, Navneet Chhabra, will graduate at the end of the summer semester in 2006.

[125]Sanborn, David M., PIT: Precision Immobilization Technique ME 4182 Section D, George W. Woodruff School of Mechanical Engineering, Georgia Institute of Technology at 1(April 28, 2006) (on file with the Georgia Association of Chiefs of Police).

[126]Sanborn at 1.

[127]Sanborn at 3.

[128]*Pursuits and the PIT Maneuver* at Att. 4 PIT Maneuver Training Syllabus at 4.

[129]Sanborn at 3.

PIT maneuver; and (2) to model the PIT maneuver in a simulation program called MSC ADAMS/Car.[130] After designing and building a load measuring device, the researchers went to the driving track at the Georgia Public Safety Training Center to implement the first part of the research project.[131]

The Georgia State Patrol Training staff assisted the researchers by first defining and explaining the PIT maneuver. In a nutshell, the PIT maneuver follows four steps: match, touch, turn and follow through.[132] In executing the PIT, the police car first matches the speed of the suspect car. Next, the police car touches the rear end of the suspect car. After the police car makes contact, the officer turns the steering wheel a quarter turn to apply force. After application of the force, the suspect car will pivot around the police car, continue to spin and come to a stop.[133]

In order to determine the force used during the PIT, the training staff conducted the PIT maneuver at various speeds. During these demonstrations, the researchers were able to measure the force applied during the PIT maneuver and also, through the use of a camera mounted on the bumper, obtain actual video footage of a PIT maneuver.[134] There were eight PIT maneuvers executed at speeds of 40, 35, 35, 45, 45, 50, 55 and 60 mph. Of these eight runs, three runs produced

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[130]Sanborn at 1.

[131]Sanborn at 11.

[132]Sanborn at 3.

[133]Sanborn at 3.

[134]Sanborn at 11-12.

measurable data regarding the amount of force utilized by the police car.[135] Additionally, no run resulted in any vehicle rolling over and no injuries were sustained by any drivers or passengers in the vehicles during the runs.

The data regarding the force used is summarized in the table below:[136]

Experimental PIT Force

Speed (mph)	Force (lbf)
45	800
55	600
60	620

As is evident, the "experiment confirmed that as the speed increases, the maximum force needed to immobilize the target car decreases."[137] In other words, the amount of force necessary to effectuate the PIT maneuver decreases with the increased speed.

The Committee also requested that the researchers consider whether a ramming technique is effective in displacing the suspect vehicle. As requested, the researchers also experimented with "ramming" the suspect car as opposed to "touching" the suspect car using the PIT maneuver. It was determined that a ram was not effective in displacing the car

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[135]For these three runs, the police car made continuous contact with the measuring device during the entire maneuver enabling the force to be measured. In the other runs, the police car did not make continuous contact with the measuring device.

[136]Barbre, *Z. et al,* PowerPoint presentation, "*PIT Testing and Simulation*" Slide 17 (May 2006) (on file with the Georgia Association of Chiefs of Police).

[137]Sanborn at 13.

from the roadway.[138] Additionally, the ramming required more force than the force used in the PIT maneuver.

After conducting the application of force research at the Georgia Public Safety Training Center, the researchers concluded the following regarding the PIT Maneuver and ramming:

> If the PIT maneuver is performed under the correct conditions and with the proper procedure, the results of this maneuver are very consistent and predictable. This was observed at the Georgia Public Safety Training Center where the PIT maneuver was performed at [speeds from 35 to 60[139]] mph with dry road conditions. Additionally, it was observed that if the officer car did not "touch" the target car, but instead "rammed" into the target car, the maneuver was completely ineffective. This ineffectiveness vividly illustrates the difference between the controlled PIT and an uncontrolled collision. A properly executed PIT requires a steady force applied over a second or two, not a sharp impact.[140]

The next step of the research project was to utilize a computer simulation of the PIT maneuver to determine how the car would perform at higher speeds. The computer simulation was done in the MSC Adams/Car computer

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[138]Sanborn at 3.

[139]June 5, 2006 Telephone conversation with Dr. Sanborn.

[140]Sanborn at 3.

program.[141] The Adams/Car is similar to a Ferrari, a low center of gravity sports car with wide tires. The topography of the road used in the simulation was a smooth, flat road and the simulation was performed with both dry and wet road conditions.[142]

The simulation results matched those of the experiments at the Georgia Public Safety Training Center.[143] The amount of force decreased as the speed increased.[144] The chart below shows the speed and force for the computer simulation.[145]

Simulated PIT Force

Speed (mph)	Force (lbf)
45	875
55	810
60	780

As is evident from the chart, the model car required the application of greater force to force it into the PIT maneuver.[146] The researchers concluded that this was due to the wider tires on the model car.[147] The model car also never

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[141]Sanborn at 6.

[142]Sanborn at 20.

[143]Sanborn at 24.

[144]Sanborn at 24.

[145]Barbre at Slide 22.

[146]Sanborn at 24.

[147]Sanborn at 24.

rolled over, even at speeds up to 120 mph.[148]

The simulation verified the experimental conditions observed at the Georgia Public Safety Training Center.[149] The PIT maneuver appears to be predictable and controllable under the conditions simulated (a smooth, flat road under both wet and dry conditions) and at speeds up to 120 mph with a low center-of-gravity vehicle such as the Adams/Car.

The researchers also attempted to model a high center-of-gravity vehicle, such as a sports utility vehicle in the Adams/Car software.[150] Due to the limitations of the software program, this was not successful.[151] The researchers, however, were able to perform rollover calculations using basic laws of dynamics in Microsoft Excel on other vehicles.[152] These calculations demonstrated that higher center of gravity vehicles, such as a Ford Explorer or an Isuzu Trooper, were more likely to roll over.[153] The analysis showed that the likelihood of a rollover for a given vehicle is inversely proportional to the coefficient of friction between the tires and the road, shoulder or other surface.[154]

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[148]Sanborn at 25.

[149]Sanborn at 2.

[150]Sanborn at 24.

[151]Sanborn at 24.

[152]Sanborn at 24.

[153]Sanborn at 25.

[154]Sanborn, E-mail message to Chief Dekmar (August 2, 2006) (copy on file with the Georgia Association of Chiefs of Police). Professor Sanborn requested the addition of these three sentences as a clarification to the original paragraph contained in the July 22, 2006 version of this

However, for a given coefficient, rollover likelihood is directly proportional to the ratio of the height of the center of mass to the wheel track width. Therefore, on a given road surface, the vehicles with high values of this ratio are the ones most likely to rollover. Due to its wide track width and low center of gravity, the Adams/Car was impossible to roll over during the simulation.[155]

This research supports the policy and training of the Georgia State Patrol. Based upon their nine years of performing the PIT maneuver, Georgia State Patrol policy lists the type of vehicle as one of the factors that should be considered when deciding to use the PIT maneuver. Specifically, the pursuit policy states:

> d. The PIT maneuver should be used only when the danger from the continued pursuit is greater than the danger associated with the using the maneuver to end the pursuit. Before the PIT maneuver is used, factors that affect the safety of using the technique should be considered. These factors include:
>
> . . .
>
> 5) Type of fleeing vehicle:
>
> a) Pickup truck (high center of gravity, narrow wheel base)
>
> b) Small car (narrow wheel base, small tires)
>
> c) Van (high center of gravity, narrow wheel base)

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paper.

[155]Sanborn at 25.

In addressing this policy provision during training, the training staff explains that using the PIT maneuver at higher speeds on vehicles such as vans and pickup trucks, which have a high center of gravity, may be more likely to result in a rollover.[156]

In summary, the Georgia Tech research confirms law enforcement's experience with the PIT maneuver. Properly performed by a trained driver under certain conditions, it is a controlled, predictable method to stop a pursuit. The PIT maneuver can be simulated utilizing a computer model. The computer simulation results as to the force needed to perform the maneuver displayed the same linear, predictable trend as did the experiments with actual vehicles.

Additionally, the research demonstrates that the PIT maneuver is not the same as ramming. It uses far less force than a ram.[157] Moreover, the ramming of a suspect vehicle is not controlled and hence, not predictable.

c. Legal and Policy Considerations in Utilizing the PIT Maneuver

As has been discussed in detail supra in the section regarding Fourth Amendment claims, the courts will consider the PIT maneuver as a seizure within the meaning of the Fourth Amendment.[158] As a seizure, it must comply with the Fourth

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[156]Pursuits and the PIT Maneuver at Att. 4 at 7.

[157]The ram used 2000 lbf in 1/10 of a second.

[158]*Brower v. County of Inyo*, 489 U.S. 593, 597 (1989) (holding that Fourth Amendment seizure occurs "only when there is a governmental termination of freedom of movement through means intentionally applied").

Amendment's requirement that the seizure be objectively reasonable. In *Graham v. Connor*, the United States Supreme Court has described an "objectively reasonable" use of force:

> Today we make explicit what was implicit in *Garner's* analysis, and hold that all claims that law enforcement officers have used excessive force—deadly or not— in the course of an arrest, investigatory stop, or other "seizure" of a free citizen should be analyzed under the Fourth Amendment and its "reasonableness" standard . . . .
>
> Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," . . . however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.[159]

As previously discussed, *Harris v. Coweta County*[160] is a recent case decided by the Eleventh Circuit Court of Appeals that addresses the use of an automobile as a use of force. In *Harris*, the Eleventh Circuit explained:

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[159]*Graham v. Connor*, 490 U.S. 386, 395-96 (1989) (internal citations omitted).

[160]433 F.3d 807 (11th Cir. 2005).

> To establish an excessive force claim, Harris must show first that he was subjected to a "seizure" within the meaning of the Fourth Amendment. . . .
>
> The district court concluded, and Scott does not contest, that Harris was seized by Scott when the latter rammed his vehicle, causing him to lose control and crash.
>
> . . .
>
> Having determined that Harris was seized, we turn to the question of whether the force used by Scott to effectuate the seizure was reasonable, in light of the facts according to Harris. . . .
>
> Like other instrumentalities, the use of an automobile cannot be construed in every circumstance as deadly force. However, an automobile, like a gun, can be used deliberately to cause death or serious bodily injury.[161]

As *Harris* holds, the use of an automobile as a seizure may be considered deadly force.

Hence, the key question concerning the use of the PIT maneuver by the officer centers on whether it would be considered "deadly force." In 1985, the United States Supreme Court held that law enforcement officers may use

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[161] *Harris*, 433 F.3d at 812-14 (emphasis added, internal citations omitted).

deadly force to protect the officer or others from what is reasonably believed to be a threat of death or serious bodily harm; and/or to prevent the escape of a fleeing violent felon who the officer has probable cause to believe will pose a significant threat of death or serious physical injury to the officer or others.[162]

In order to answer whether the PIT maneuver would be considered deadly force, it is first necessary to define deadly force. The courts, including the Eleventh Circuit, have adopted the Model Penal Code definition of deadly force. The Model Penal Code defines "deadly force" as follows:

> Force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force.[163]

In a later case involving a person who died after being fettered, the Eleventh Circuit concluded that fettering or hog-tying was not deadly force because the evidence did not show that "death or serious injury [was] a likely consequence of fettering a person."[164]

The courts have not yet explicitly ruled on whether the PIT

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[162]*Tennessee v. Garner*, 417 U.S. 1, 11 (1985).

[163]*Pruitt v. City of Montgomery, Ala.*, 771 F.2d 1475, 1479 (11th Cir. 1985).

[164]*Garrett v. Athens-Clarke County*, 378 F.3d 1274, 1280 (11th Cir. 2004).

maneuver is deadly force.[165]

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[165]Research located two other cases regarding the PIT Maneuver. In one, *Abney v. Coe*, the PIT Maneuver was defined as "bumping, ramming or sideswiping a vehicle in order to end a chase." 2006 U.S.Dist. LEXIS 29547 *10 (M.D.N.C. April 25, 2006). In that case, a deputy was pursuing a motorcycle and "bumped" the motorcycle to get it stopped, the motorcycle continued, but was wobbling, and was ultimately struck by the deputy's car. *Abney* at *6-8. The court concluded that if the deputy intentionally struck the motorcycle, this would constitute deadly force. *Abney* at *16. Accordingly, the court denied summary judgment and left it for a jury to decide whether the driving created a substantial threat to the officers and others. *Abney* at *20-21. In *Abney*, however, the definition that the court accepted of the PIT Maneuver is not the definition used by the Georgia State Patrol and studied by the Georgia Tech researchers. Additionally, Georgia State Patrol policy does not permit utilizing a PIT Maneuver on a motorcycle. Georgia State Pursuit Policy No. 17.02 Pursuits at 6.

In the other case involving a PIT Maneuver, the use of the PIT Maneuver did not stop the driver as he was able to regain control of his vehicle after being pitted three times. The court did state that the use of the PIT was "in an attempt to stop the fleeing Cotois vehicle and apprehend its driver. The only harm intended by this conduct was incidental to [the officer's] legitimate objective of arresting Contois." *Helseth v. Burch*, 258 F.3d 867, 872 (8th Cir. 2001). The court further stated that had the officer succeeded in stopping Contois using the PIT, those actions would have been "subject to a reasonableness challenge under the Fourth Amendment." *Helseth*, 258 F.3d at 872. Significantly, however, it made no finding that the use of the PIT Maneuver was deadly force. The court further pointed out that "Contois was a fleeing criminal, whose irresponsible high-speed driving endangered countless citizens and ultimately killed one innocent bystander and maimed another. Burch and the other police officers who risked their lives to remove this menace from the public highways were not guilty of a conscience-shocking intent to harm." *Id.* at 872. In the dissenting opinion, one judge did conclude that the use of the PIT Maneuver was "deadly force when used on a vehicle moving at high speeds" because "intentional ramming causes the high probability of serious injury or death." *Id.* at 877. The dissent did not have the benefit of the Georgia Tech research and the experience of the Georgia State Patrol when it made this statement. As discussed, the PIT maneuver is very different than a ram.

Using the Model Penal Code definition of deadly force, it is the Committee's opinion that the PIT maneuver is not deadly force because death or serious injury is *not* a likely consequence of using the PIT maneuver in accordance with proper training and policy. The Committee's opinion is based upon the current law, the Georgia Tech research project and the Georgia State Patrol's statistics and experience.

With regard to the law, the Eleventh Circuit has spoken about the PIT maneuver in *dicta*[166] in the *Harris* case. In *Harris*, the officer had not been trained to execute a PIT maneuver, never attempted to use the PIT to stop the suspect vehicle, and instead chose to ram the vehicle to cause it to leave the roadway. In determining that the supervisor was not liable, the Eleventh Circuit made a clear distinction between a PIT and a ram. The court said very specifically:

> Scott, however, chose not to execute a PIT at all, but rather to ram the car at a very high speed from behind. Because this ramming was not authorized by [the supervisor], we cannot say that [the supervisor's] conduct-authorization of a *safe PIT* that was not executed-violated Harris' constitutional rights.[167]

As mentioned, this description is *dicta* as the PIT maneuver was not executed in Harris; however the description of the

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[166]Dicta is the plural term for "dictum." Dictum is defined as "a judge's statement of opinion on some legal point not essential to and other than the principal issue of the case." WEBSTER'S NEW WORLD DICTIONARY 392 (2nd College Ed. 1972).

[167]Harris, 433 F.3d at 817 (emphasis added).

PIT as "safe" provides support for the conclusion that a court would find that it is not deadly force.

Even more importantly, the data collected by the Georgia State Patrol shows that the use of the PIT maneuver is not likely to cause death or serious injury. According to the 2001-2004 Pursuit Summary Report, troopers engaged in 971 pursuits during this time period.[168] In 195 cases, the PIT maneuver was utilized to stop the vehicle.[169] In three of the 195 cases, there was a fatality crash associated with the use of the PIT maneuver.[170] In two of those fatality crashes, the suspect was not wearing his seatbelt. In two of the fatality crashes, the vehicle left the roadway and struck a tree. In one of the fatality crashes, the vehicle left the roadway and rolled over, which ejected the driver who was not wearing his seatbelt.

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[168]Pursuits and the PIT Maneuver at Att. 3 Pursuit Summary Report 2001-2004 at 1.

[169]*Id.* at 4.

[170]*Pursuits and the PIT Maneuver* at 5-8. The crashes occurred on February 7, 2001, March 26, 2004 and August 17, 2004. In one case during this period, a trooper was killed during a pursuit on December 1, 2003. He attempted to use the PIT maneuver; however, the suspect struck the trooper's car with his truck, causing the trooper to lose control of his vehicle. The investigation performed by the Special Crash Reconstruction Team (SCRT) determined that the "cause of death associated with this collision [was] not related to the PIT maneuver, but linked directly to the actions of the fleeing driver." *Pursuits and the PIT Maneuver*, at 7. In addition to this case, there have been three fatalities involving the PIT Maneuver outside of the 2001-2004 time period: January 11, 1999; January 27, 2005; and March 19, 2006. There is no data as to the number of PIT maneuvers performed in the years 1999 and 2000. As of the submission of this report, the Georgia State Patrol statistics for 2005 were not available.

As is evident from these numbers, the PIT maneuver caused death in only 1.5% of the cases in which it was used. Such a small percentage cannot be said to create a "substantial risk of causing death or serious injury." Significantly, two of the three fatalities involved suspects who were not wearing their seatbelts.[171] Hence the failure to wear a seatbelt also played a part in these fatalities and the drivers may have survived had they been wearing their seatbelts.[172]

In addition to the data from the use of the PIT maneuver on suspects, Georgia State Patrol has data regarding training. According to the Driver Training Coordinator:

> Since the Georgia State Patrol began training in the PIT maneuver in 1998, there have been approximately 1,485 law enforcement officers trained. During this training there have been approximately 61,800 PIT maneuvers performed with no injuries. Most PIT maneuvers were performed at 35 – 50 mph. There have been at least 40 high speed PIT demos at speeds in excess of 70 mph. All of these PIT maneuvers are included in the

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[171]In Georgia, seatbelt use is inadmissible in civil cases as evidence of "negligence or causation." O.C.G.A. §40-8-76.1(d). In determining whether the use of the PIT Maneuver is the use of the PIT maneuver is deadly force, however, the lack of a seatbelt should be considered. A suspect who uses his seatbelt is far less likely to sustain serious injury or die during the execution of the PIT maneuver.

[172]According to the National Highway Traffic Safety Administration, "In 2004, the majority (55%) of the occupants of passenger vehicles . . . killed in motor vehicle crashes were unrestrained." Traffic Safety Facts Research Note, "Restraint Use Patterns Among Fatally Injured Passenger Vehicle Occupants" (May 2006), retrieved from http://www-nrd.nhtsa.dot.gov on June 7, 2006.

above numbers.

> The number above does not reflect any PIT maneuvers that were performed as demos for [the] news media, dignitaries (board members, politicians, government officials etc.) or outside of a scheduled training session. An estimated number of these types of PIT maneuvers would bring the total very close to 62,000 performed during training with no injuries or fatalities.[173]

Additionally during PIT maneuver training, there have been two instances where the vehicle rolled over.[174] Both rollovers occurred when instructors were driving the vehicles. "The primary cause of these two rollovers was the surface of the shoulder around the track. The sand piled up as the tires slid across the ground and eventually dug in enough to cause the rollover."[175] Of course the instructors were wearing their seatbelts and there were no injuries as a result of the rollovers.

After analyzing these numbers, the Committee concludes that the PIT maneuver when used properly by a trained officer is not deadly force within the meaning of the Model Penal Code definition.[176] The Georgia Tech research proves

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[173]June 9, 2006 Memorandum from Sgt. Ryan Newman to Captain Russell Powell (hereinafter "June 9, 2006 Memorandum") at 2.

[174]June 9, 2006 Memorandum at 1.

[175]June 9, 2006 Memorandum at 1.

[176]Deadly force may be authorized during pursuits if the suspect's driving was sufficiently reckless to pose "a substantial threat of imminent physical harm to motorists and pedestrians." *Harris*, 433 F.3d

that the PIT maneuver is controlled and predictable. It is very different than a ram. Additionally, the information collected by the Georgia State Patrol shows that the PIT maneuver is not likely to cause death or serious injury when used in accordance with Georgia State Patrol's policy.

Of course, the Committee also recognizes that the use of the PIT maneuver in certain circumstances could result in serious injury or death. For this reason, it is crucial that officers be properly trained in the use of the PIT maneuver and that policymakers provide clear guidance in agency policy for the use of the PIT maneuver.

VI. Technological Alternatives to Pursuits

This section will provide a general overview of the feasibility and availability of pursuit intervention tools. Technology has always proven to be a realm where devices render each other obsolete within short time spans. This is a phenomenon usually driven by new developments, research, improvements and cost reduction.

Pursuits pose a quagmire of challenges that predispose the technology sector to infinite dead ends and unique problem sets. This has resulted in a slow development process, often devoid of any novel approach that might realistically represent the new silver bullet to ending the police chase. Although ideas are many and some research is cited, publications specifically endorsing certain tools and techniques are few. The primary reason for this is the fact that, despite looking good on paper, many tools are not yet

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at 815. The courts have concluded that the suspect's driving created a substantial threat sufficient to authorize the use of deadly force, either in the form of a firearm or using the vehicle. *Harris*, 433 F.3d at 816 (citing cases).

viable.

In 1998, the National Institute of Justice[177] published a report examining the issue of police pursuits.[178] Regarding pursuit intervention technology, the report opined that:

> Police vehicle pursuits are dangerous, and officers have traditionally had few options in stopping a fleeing suspect. However, technological development may help to facilitate major changes in law enforcement services by the year 2000. Joint ventures now occurring between law enforcement and industry are indicative of future markets for advanced technology. The six prototype technologies described below offer seven potential alternatives to high-speed pursuits.[179]

The report then discussed the six prototype technologies: (1) retractable spiked barrier strip; (2) auto arrester systems; (3) Road Patriot™/Road Sentry™; (4) checkpoint barrier strip; (5) fleeing vehicle tagging system; and (6) precision immobilization technique. A prevalent theme to that report was that at the time, no acceptable technological means existed in terms of pursuit intervention, although

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[177]The National Institute of Justice is "the research, development, and evaluation agency of the U.S. Department of Justice and is dedicated to researching crime control and justice issues." Retrieved on June 8, 2006 at http://www.ojp.usdoj.gov/nij/about.htm.

[178]National Institute of Justice, "High-Speed Pursuit: New Technologies Around the Corner," (hereinafter "High-Speed Pursuit") U.S. Dept. of Justice (Oct. 1996).

[179]High-Speed Pursuit at 3.

electromechanical devices proved most promising. In terms of equipment available to the average police agency, not a lot has changed since then.

Also in 1998, the Pursuit Management Task Force (PMTF) was formed under the auspices of the National Institute of Justice's Office of Science and Technology.[180] It published a report regarding Police Pursuit Practices and the Role of Technology. After examining pursuit technologies, the report declared that:

> spike strips were found to be most frequently used, and currently, the most effective technology readily available. Most of the other reviewed technologies were in the conceptual or precommercial phases and require substantial testing and development. The PMTF identified a group of technologies that are of high priority for additional research, development and commercialization.[181]

Additionally, the report concluded that there was "currently no single technology on the horizon that affords a 'universal' solution to pursuits."[182] The PMTF also recommended technologies as "high priority" to move to prototype stages for evaluation. These high priority technologies were:

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[180]National Institute of Justice, Pursuit Management Task Force: Research Preview (hereinafter "Pursuit Management Task Force") 1 U.S. Dept. of Justice (Aug. 1998).

[181]Pursuit Management Task Force at 1.

[182]*Id.*

> retractable direct injection electrical systems; radiative electrical systems, including high-power microwave; cooperative systems with law enforcement activation; and auditory/visual sensory enhancements (improved warning devices).[183]

Some of these systems have now reached the testing stage and will be discussed in this paper.

In reviewing technology, there is one crucial consideration for the majority of agencies and that is cost. While the possibility of a police pursuit is present in every jurisdiction, not all jurisdictions have the financial resources to invest in some of the new technology. When many citizens think of a police department, they may think of large police agencies such as the Los Angeles Police Department or the City of Atlanta Police Department that employ more than a thousand officers. They may be surprised to learn that 90% of all law enforcement agencies in the United States employ less than 50 officers.[184] These smaller agencies, many of which are located in rural areas, only bring limited monetary resources to the table. Yet, these smaller agencies are just as likely to face a pursuit situation as the larger agencies. For this reason, this review will, whenever possible, address the anticipated cost of the new technologies.

Pursuit technology can be separated into several types: (1) mechanical; (2) tagging and tracking; (3) traffic preemption; and (4) cooperative systems. Some pursuit technologies,

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[183] *Id.* at 3.

[184] National Institute of Justice, *Law Enforcement Technology - Are Small and Rural Agencies Equipped and Trained?*, Dept. of Justice (June 2004) at 1.

particularly mechanical technologies such as spike strips, are already used by jurisdictions throughout the United States. Others are simply not feasible because of the expense. Still others just don't work very well.

A. Mechanical

Mechanical devices are those that disable the vehicle. Mechanical devices include (1) tire deflation devices such as stop-sticks or caltrops[185]; (2) barriers, fixed, movable, cable and inflatable; and (3) entanglers or nets. The Memphis Shelby Crime Commission conducted an excellent analysis of the strengths and limitations of each device and a chart summarizing this analysis is attached hereto as Appendix G.[186] As the analysis by the Memphis Shelby Crime Commission is so thorough, this section will only briefly review the stop-stick and a new product on the market.

The most widely used device is the stop-stick or tire deflation device. A stop-stick is a simple device that puts holes in the suspect vehicle's tires. The common operational principle to virtually all stop sticks is that they are designed to deflate the suspect tires slowly and safely. As a result, utilizing stop sticks seldom, if ever, results in crashes.

The real problem with stop-sticks is deployment. Prior to using them, officers must anticipate the most likely route of

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[185]Caltrops are "devices with four projecting strips that, when deployed, rest on three spikes with the fourth pointing upward." Memphis Shelby Crime Commission, The Role of Technology in Supporting Police Pursuit Policies (April 2001).

[186]"Analysis of Mechanical Systems" chart from Memphis Shelby Crime Commission, "The Role of Technology in Supporting Police Pursuit Policies" (April 2001).

the pursuit, outrun the fleeing suspect and get to a point where they can safely deploy stop-sticks in the roadway. Additionally, once the stopsticks are deployed, the officers must do their best to keep citizens out of the area of deployment. Hence, the utilization of stop-sticks requires a number of officers who are vigilant at key locations.

Attempts have been made to eliminate some of this process by the utilization of static placement of stop devices. One product allows officers to deploy a stop-stick type device from the back of the police car during the pursuit. One such device currently being advertised is designed to be dragged behind the front police vehicle at a distance of 16 feet.

One disadvantage to this device is the need to get in front of the fleeing vehicle to deploy the device. In a pursuit, the front vehicle has the disadvantage – and this is the reason that the PIT maneuver can be very successful in dislodging the front vehicle from the road. The officer places himself in jeopardy of being rammed by the suspect once he assumes the front position in the pursuit.

In addition to the danger to the officer deploying this device, the device currently sells for $1475.00 plus shipping. There is also a lease plan currently advertised at $500.00 down and $85.00 a month for one year. At this price, this device may be cost-prohibitive for smaller departments. To equip a small number of units, perhaps 10 patrol units, an administrator would have to budget $15,000.00 to purchase or $10,700.00 to lease for a year for something that may or may not effectively stop a pursuit – and may only be used in a small percentage of pursuits.

B. Tagging and Tracking

Suspect vehicle tagging and tracking involves a new method

of ending the physical engagement of the pursuit while allowing for the ongoing investigation.[187] One system being advertised allows the police to launch an adhesive Global Positioning System (GPS) tracking device onto a target vehicle, terminate the pursuit and apprehend the suspect at a later time. Using pre-existing technology, police can track the suspect vehicle anywhere.

This system is composed of commercial off-the-shelf technology. It is comprised of a tracking projectile that is a miniaturized GPS receiver, radio transmitter, power supply and a launcher which can be hand-held or mounted on a police car. Once the fleeing suspect's car has been tagged, its position is transmitted via wireless modem, allowing a centralized information facility (usually the agency dispatch center or 911 Center) to view the suspect vehicle's exact location. In many cases, this would allow a pursuit to be replaced with an interdiction strategy. A tagging system works best when there are helicopters available to assist in the tracking.

Ultimately, this device can be used eventually to identify and track the suspect vehicle. Of course, running the vehicle's tag will also identify the vehicle owner, however, the owner may not be driving the vehicle or may be smart enough not to go home.

Even though this device seems promising, there are still operational limitations. First, the officer must close the distance with the fleeing vehicle to discharge the tracking device. Next if the suspect being chased knows his vehicle is tagged, he may quickly abandon the vehicle. Typically, most

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[187]See Appendix G (analyzing strengths and limitations of vehicle taggers).

fleeing suspects abandon their car anyway, leaving police with a recovered vehicle and no suspect. Then what frequently occurs next is that the driver reports the vehicle stolen. If this occurs, unless police can prove otherwise through car video or other means, the driver may be off the hook and the fictitious car thief remains focus of a dead case file. The positive side of the abandoned vehicle is that the suspect no longer poses a danger to the public on the roadway.

Another concern is the cost, which may be prohibitive for smaller agencies. The Committee was unable to get a definite cost estimate at this time from the manufacturer. It is anticipated that the cost will be several thousand dollars per vehicle and then there will be a cost for the communications link. Currently, this system is focused on precommercial testing with the Los Angeles Police Department. Additionally, the manufacturer is working with the National League of Cities on potential grants to deploy the system in another large city.

C. Traffic Preemption

Traffic preemption systems manipulate traffic control devices at the discretion of public safety and are usually involved in some form of emergency response. One system currently being advertised gives any authorized vehicle the capability to move through traffic without unduly disrupting signal synchronization or other traffic. The system is advertised as providing for faster, life-saving 911 response and able to turn any lane into an electronic high occupancy vehicle (HOV) lane for transit vehicles. The system uses infrared technology to grant authorized vehicles momentary right-of-way at signalized intersections. The system reportedly can identify every vehicle on the system, record travel direction and establish vehicle location. Some

jurisdictions have installed these infra-red based traffic signal controls.

As with most of this technology, however, it is currently cost-prohibitive. The good news is that the transmitter device slips into a pre-existing lightbar on the top of the police car. The bad news is that each emitter costs in excess of $1000 per unit. Next, the jurisdiction must consider which intersections to target for this type of control option. Each intersection requires a detector available either as a single channel one direction or single channel dual direction. In addition, jurisdictions must install the cabinet for the power supply on a light pole. The average price is about $415.00 per detector, $1006.75 for the phase selector, $135 for the card rack that mounts in cabinet and detector cable at $0.39 per foot available in 500, 1000, or 2500 foot reels. Adding these costs, it appears that the cost to equip only one police car and one traffic light is approximately $2500.00.

GPS versions are also advertised and are currently being utilized in larger cities such as Houston, Denver and St. Paul. Also noteworthy is the fact that for most of the systems advertised, the company displays fire trucks and ambulances and describes the benefits in terms of emergency vehicle response times. In other words, it appears that this system was designed more with quick passage of emergency vehicles in mind than with stopping a pursuit.

As is the case all too often with new technology, this uncharted territory is again full of potential pitfalls. How to use this technology in a pursuit? Should the officer in a pursuit change the intersection light to red, thus creating traffic congestion as a means of preventing escape? The problem is that this may result in a citizen's vehicle being struck by the suspect. On the other hand, the officer could change the lights to green in the direction of travel of the

pursuit to ensure free passage through intersections for the suspect vehicle and pursuit units. But how does this help end the pursuit? It appears this alternative technology is not only costly, but has sketchy chances of success.

D. Cooperative Systems

Cooperative systems hold the greatest promise in pursuit intervention for the future. Cooperative systems can ultimately disable vehicles as well as record circumstantial events pertaining to unauthorized use. Cooperative systems may be activated by law enforcement to cause a fleeing vehicle to come to a stop.[188]

One such device allows for the remote control of select vehicle operating systems. This device is reported to influence the starter, fuel pump, ignition and 4-way flashers.[189] Part of the attractiveness of this form of intervention includes the sequence of events leading to the stop. For instance, with the appropriate equipment installed, intervention could include a transmitted message that is played over the suspect's stereo system – perhaps even recorded by a 911 dispatch center. With hazard lights activated and a progressively degenerating speed, the driver

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[188]The Memphis Shelby Crime Commission has prepared a chart analyzing the strengths and limitations of three cooperative systems. A copy of this chart is attached hereto as Appendix H.

[189]Other cooperative systems have been considered such as switches mounted at the front or rear of a vehicle sensitive to impact. Such systems are not nearly as viable an option due to the fact that the courts have ruled that ramming a vehicle is deadly force. Hence such systems could only be utilized when the suspect is created a risk of death or serious bodily injury to the officer or others. Additionally, the notion of having a police cruiser bump into the front or rear of a suspect vehicle such as a large truck is far from appealing.

would have no recourse but to pull off the side of the road. The vehicle is then out of commission thus presenting no danger to other drivers.

Placing a small radio receiver in a vehicle to disable the vehicle (a "kill switch") is easy. Enacting the legislation that would mandate this installation of the kill switch is another matter. Law enforcement could certainly anticipate protests by groups claiming that such legislation raises the specter of an Orwellian society where all vehicles are subject to being stopped by police electronically.

Cooperative systems could be very useful in preventing or at least ending police pursuits quickly and safely. Also worthy of consideration is the impact to society in terms of homeland security. Utilizing such systems in large trucks and tractor-trailers involved in transporting materials could ensure the ability to stop these vehicles in cases of drivers who fail to comply with the law regarding the transport of hazardous chemicals or if the truck is hijacked by terrorists.

This technology is feasible, particularly for the engine control aftermarket systems; however, vendors are engaging in little development. What would spur this development? The answer is simple: legislation requiring this type of technology in all vehicles.

As always with all new technology (recall the furor over OC spray and the current controversy over the use of the Taser), there will always be protests from citizens who are fearful that society is becoming Orwellian. And of course, there must be laws regulating the use and punishing misuse of the technology. An existing model to consider is the state and federal laws protecting access to criminal history data that is collected by the states and the National Crime Information Center (NCIC). The laws set forth criminal and

administrative sanctions for misuse and also require periodic audits to ensure compliance.

In terms of an initial step, perhaps the greatest potential for use of these systems will come from the privately owned fleets of vehicles (such as trucks and rental cars). The companies that own such fleets may appreciate the benefits of cooperating with law enforcement and also reduce their losses due to theft by equipping their vehicles with cooperative systems.

E. Electrical Systems

Electrical systems are categorized as either radiative or direct injection. Direct injection systems require contact with the target vehicle and radiative systems do not. Electrical energy from a stored source can be discharged through wires emanating from a device causing current to pass through the frame and engine ground paths. The current that is passed from the battery through the wires disables the electronic components of the target vehicle. This can be either in the form of a pre-emplaced platform or a package launched at the pursued vehicle. Public concerns over launched rocket-type devices have thus far pre-empted any wide-spread fielding of a direct injection product, although some testing has been accomplished.

Two such devices are reportedly in existence: the Road Patriot (launchable) and the Road Sentry (stationary). The Committee conducted an internet search for information regarding both systems and was unable to locate any information. Consequently at the time of this publication, the status of these seemingly obscure devices is unknown.

One concept has already made it beyond prototype development and offers the end-user with the option of

deployment during permanent access points, mobile road checkpoints and portable systems. A direct injection device is now commercially available. The manufacturer has performed proof-of-principle demonstration tests with a laboratory pulsed-power supply. The device has also been demonstrated on real vehicles for the Colorado State Patrol, Colorado Springs Police, United States Department of Transportation, United States Customs, Drug Enforcement Agency, United States Border Patrol, the United States Attorney General's Office, the Army Research Laboratories, and numerous news media groups.

It works by injecting relatively large electromagnetic pulses into the sensitive ignition and engine-control electronics of vehicles, damaging or disrupting the electronics, and causing the vehicle to come to a stop or be inoperable. According to the manufacturer, the vehicle cannot be restarted until the damaged electronics are replaced. If the vehicle is moving, once the electronics are damaged, the vehicle coasts to a safe stop as if it had run out of gas.

According to the advertisements, the use of current pulse power technology and packaging for simplified operation should result in a power supply package less than six cubic feet. That, however, is too large to fit in the front seat of the typical patrol vehicle. Command activation is accomplished with a wire or remote control radio frequency transmission, similar to that used for auto alarm systems. Two systems are currently being advertised, one portable and one stationary. The portable version appears much more feasible and uses a pad or hose rolled across the highway where the suspect car will run over it, similar to the way stop-sticks are deployed today. Once the system is armed by an officer, the next vehicle to pass over the pad triggers the electric charge. As with stop-sticks, police must first anticipate the most likely route of the pursuit, outrun the fleeing suspect and get to a

vantage point to deploy the device. Again, without a significant deployment of officers constantly vigilant at key locations, even this simple device is not feasible.

It is worth mentioning that in the future, radiative technology may represent the ultimate in pursuit intervention technology. The prototypical radiative device will allow police to target a suspect vehicle and with a pulse of energy (usually microwave), shut down the electronic components of an engine. The Army Research Laboratory is conducting initial testing on such a system. These systems will be more reliable than smart technology, safer than stop sticks, more selective than traffic control and immediately available to the officer . . . some day.

F. Summary of Technology

It is apparent from this review that technology exists or is in development that will ultimately enable law enforcement to stop vehicles driven by suspects who are fleeing from law enforcement. Stopping the pursuit quickly and without the vehicle losing control will result in fewer injuries and deaths to citizens and law enforcement. The problem is simply that, with the exception of stop-sticks, this technology is costly and/or not fully operational as yet. Additionally, the deployment of the mechanical devices like stop-sticks requires a number of officers and is simply not feasible in rural jurisdictions. Whether the ultimate solution is controlled intervention systems in all vehicles or radiative systems deployed by officers, law enforcement needs to stay abreast of the technology and continue to support this research.

VII. Conclusion and Recommendations

The Committee concludes that police pursuits may be

required in certain circumstances; however, the Committee also recognizes that police pursuits can result in injuries or death to innocent persons, suspects and officers. In an effort to avoid this, Georgia law requires that the officer drive with "due regard for the safety of all persons"[190] during the pursuit. In order to ensure that officers drive with the requisite due regard, the Committee makes the following recommendations:

> *Policy*: Law enforcement agencies should promulgate a policy governing pursuits that sets forth guidelines to assist the officer in pursuing with due regard for the safety of the public. The agency's pursuit policy may be either a judgmental or a restrictive policy. Regardless of which type of pursuit policy is chosen, the officer should always weigh the risks of the pursuit versus the immediate or potential danger to the public should the suspect remain at large. At all times during the pursuit, the need to apprehend the suspect must outweigh the level of danger created by the pursuit. The agency's pursuit policy should be specifically tailored to the size, location and mission of the agency and should provide guidance in the specific areas discussed earlier in this paper.
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> *Training*: In addition to the training officers receive in mandate school, agencies should provide periodic training regarding their agency's pursuit policy to their officers.

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[190]O.C.G.A. § 40-6-6(d)(1)/

Reporting: Agencies should require officers to report every time they engage in a pursuit, as well as when a pursuit is initiated but discontinued by the officer. The supervisor on duty during the pursuit should also review the report and provide information regarding the pursuit. These reports should be periodically reviewed by agency heads because they may reveal patterns or trends that could indicate training needs and/or policy modifications.

In addition to these recommendations, the Committee is encouraged by the Georgia Tech research project, as well as the experience of the Georgia State Patrol in using the PIT maneuver. When properly performed by a trained driver under certain conditions, the PIT maneuver is a controlled, predictable technique to stop a pursuit thus eliminating the danger to the public from the pursuit. The use of the PIT maneuver is not likely to, nor is it intended, to cause death or serious injury. Consequently, the Committee concludes that the use of the PIT maneuver, unlike a ram, is not deadly force. The Committee recommends that the PIT maneuver only be utilized by officers who have received training in its use. Additionally, agencies should provide clear guidance in their policy regarding when and under what conditions the PIT maneuver may be used.

The Committee is somewhat optimistic about the possibility of technology some day eliminating the need for pursuits at all. The Committee strongly supports the development of technology such as tracking devices and cooperative systems that will safely disable vehicles. Perhaps in the near future, an officer will have the ability to activate a device that will disable the vehicle when a suspect does not accede to the officer's authority. When such technology becomes a reality, the suspect can no longer present a danger to the public by

choosing to flee from law enforcement.

The issue of police pursuits will always require much thought on the part of policymakers. A very astute observation, which originated from a National Institute of Justice study of police pursuits, sums up the dilemma created by police pursuits:

> On the one hand too many restrictions placed on police use of pursuit could place the public at risk from dangerous individuals escaping apprehension. On the other hand, insufficient controls on police pursuit could result in needless accidents and injuries.[191]

Policymakers must ensure that their pursuit policy considers not only the risk of the pursuit, but also the danger to the public from the suspect escaping.

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[191] Alpert, Geoffrey P., *Police Pursuit: Policies and Training*, National Institute of Justice Research in Brief at 1 (May 1997).